Judge

Sent up by Judge Grier

SUPREME COURT OF THE UNITED STATES.

No. ~~186.~~ 121.

RUSSELL STURGIS, LIB'T AND APP'T,

vs.

JOHN CLOUGH, ROBERT L. MABEY, AND HENRY M. WEED, CLAIMANTS OF THE STEAMBOAT R. L. MABEY, HER TACKLE, &c.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

GOVERNMENT PRINTING OFFICE.

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1 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, Kenneth G. White, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the writings annexed to this certificate are true copies of their respective originals on file and remaining of record in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 10th day of October, A. D. 1861, and of the independence of the said United States the eighty-sixth.

[SEAL.]

KENNETH G. WHITE, *Clerk.*

2 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the southern district of New York, greeting:

[SEAL.]

Whereas, lately, in the circuit court of the United States for the southern district of New York, before you, or some of you, in a cause between Russell Sturgis, libellant and appellant, and the steamboat R. L. Mabey, her tackle, &c., John Clough, Robert L. Mabey, and Henry M. Weed, claimants and appellees, the decree of the said circuit court was in the following words, viz:

"It is now, on motion of D. McMahon, advocate for the appellant, ordered and adjudged and decreed by this court that the judgment and decree of the district court in this cause, dismissing the libel therein, &c., each party to pay their costs, be, and the same is hereby, in all things, affirmed.

"And it is further adjudged and decreed that the said claim-
2½ ants and appellees recover of the said libellant and appellant their taxed costs of said appeal, amounting to the sum of one hundred dollars and eighty-five cents.

"And it is further ordered, adjudged, and decreed, that unless the amount thus adjudged to be paid by this decree be brought into the court by the said libellant and appellant within ten days after notice of this decree, that the said claimants and appellees do have execution against the said Russell Sturgis, to compel the performance of this decree.

"And it is further ordered, adjudged, and decreed, that the said claimants and appellees do have summary judgment against Latimer Baily and Robert L. Taylor for the sum of two hundred and fifty dollars, being the amount of their bond and stipulation given by said parties on said appeal for costs, to be decreed against said libellant and appellant in this course; and that said claimant and appellee have execution against said sureties on said summary judgment to col-

3 lect said costs, unless the said libellant and appellant, Russell Sturgis, ten days after notice of this decree, bring into court the amount of costs recovered by this decree." As by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress in such case made and provided, fully and at large appears.

And whereas in the present term of December, in the year of our Lord one thousand eight hundred and fifty-eight, the said cause came on to be heard before the said Supreme Court, on the said transcript of the record, and was argued by counsel: On consideration whereof, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed with costs, and that the said libellant and appellant, Russell Sturgis, recover against the said claimant and appellee

4 one hundred and twenty-five dollars and twenty-seven cents for his costs herein expended, and have execution therefor.

And it is further ordered that this cause be, and the same is hereby, remanded to the said circuit court for further proceedings to be had therein, in conformity to the opinion of this court.

MAR. 11th.

You, therefore, are hereby commanded that such execution and further proceedings be had in said cause, in conformity to the opinion and decree of this court, as according to right and justice and the laws of the United States ought to be had, the said appeal notwithstanding.

Witness the honorable Roger B. Taney, chief justice of said Supreme Court, the first Monday of December, in the year of our Lord one thousand eight hundred and fifty-eight.

Costs of appellants:

Clerk	$105 27
Attorney	20 00
	125 27

Taxed by—

WM. THOS. CARROLL,
Clerk of the Supreme Court of the U. S.

5 At a stated term of the circuit court of the United States for the southern district of New York, in the second circuit, held at the city hall in the city of New York, on Monday, the 25th day of April, in the year of our Lord one thousand eight hundred and fifty-nine.

Present: The honorable Samuel Nelson, an associate justice of the Supreme Court of the United States.

RUSSELL STURGIS
vs.
THE STEAM TUG R. L. MABEY, JOHN CLOUGH, AND ROBERT L. MABEY.

On reading and filing the mandate of the Supreme Court of the United States, whereby the decree of this court made the 17 day of September, 1857, is reversed with costs, and this court is directed to enter a decree in favor of the libellants, with costs, now, on motion of E. C. Benedict, advocate of the libellants, it is hereby adjudged and decreed, in compliance with the directions of said mandate, that the libellant, Russell Sturgis, recover of the claimant of the said steamboat R. L. Maybie the amount of the damages by him
6 sustained by reason of the collision in the pleadings mentioned, together with the costs of the Supreme Court as taxed, to wit, $125 77, and the costs in this court and the district court to be taxed. And, on like motion, it is ordered that it be referred to one of the commissioners of this court to ascertain and report the amount of said damages to this court with all convenient speed.

7 U. S. circuit court.

RUSSELL STURGIS
vs.
THE STEAMBOAT R. L. MABEY, her tackle, &c. } Reference.

Reference under order of reference dated April 25th, 1859.

June 3d, 1859. Present: Counsel for respective parties.

Thomas Huff sworn on part of libellant:

Q. What was your business in September, 1854?
A. Shipwright.
Q. In whose employ?
A. McGinness & Co.
Q. Did you have any connection with the repairing of the steamer Hector in that month?
A. Yes, sir.
Q. What?
A. I was foreman, and superintended the work.
8 Q. State what damages caused to the Hector by the collision with the R. L. Mabey were repaired in August and September, 1854.
(Obj'd to, overruled, and exception taken.)
A. There were 22 beams broke off on the starboard side. In breaking off the beams the deck was torn up, started. Sixteen knees on the starboard side, outside, and the same number inside, were injured; some were broke, some started, so that they could not be used again, and some of the knees broke on the larboard side. The shock of the blow drove the beams through and sprung the knees on the larboard side, and when they are sprung they can't be used. We had

to take up the deck to get all the old beams out and replace them by new. The beams were broke off just inside the clamp-streak between the waiste-streak and the clamp-streak. We have to take that all off, as the bigger part of it was damaged by the collision. We had to put a new deck on to her. The old plank were not fit to go
9 back again. The deck was laid aft of the wheel-beam. The reason was that we run the deck so much further aft than the collision was to break butts. We put all new guards on both sides. The starboard side was all carried away; all gone. We caulked her deck and four seams each side from the wheel forward outside.

(Obj'd to.)

Q. State whether it was necessary or not to run the deck as far aft as you did in order properly to repair the damages.

(Obj. to, overruled, and exception.)

A. Yes, sir.

Q. State why the guards on both sides were repaired.

A. The guards on the starboard side were all stove away, and the larboard side. In taking out the old beams that were broken we had to take the old ground off there. It being solid work, we could not get the beams out without taking the guard off, and to replace
10 the guard the same would have cost a great deal more than it did the way we done it. We made both sides alike.

Q. Explain that more fully.

A. The guards on the boat were all solid before she was run into, and one guard one side being carried away, we had to take it off to make it like the starboard side to save expense. It was cheaper to put in short beams than it was to put in solid work. I think there were put in that guard the boster beam.

Q. Look at the bills now shown you, and state whether that contains a correct account of the time and materials used in making those repairs.

(Obj. to, as it is not a memorandum made himself, nor an original, and is improper to be shown to the witness. Overruled, and exception.)

A. I know that the two barrels of pitch, two pitch mops,
11 three float-stages to work on, 11 days, cartages of the stuff from the yard to the vessel, the carpenters' and caulkers' time, the boys' time—I know of these personally. I know the oakum was used, for I helped use it myself, and I weighed it myself. too, and I carried it to the boat myself on my shoulder. The rest of the material was used, but I didn't order it.

Q. State what was the course of business in McGinniss's place with reference to the measurements of timber used.

(Obj'd to.)

A. We took the inspector's mark from the timber and gave it to Mr. Dougherty, the bookkeeper.

Q. Was that done in this case?

(Obj'd to.)

A. Yes, sir. The spikes were weighed in the office by Mr. Dougherty.

Q. Where did the vessel lie at the time these repairs were done?

A. At the foot of Gouvernear st.

12 Q. Where had she received the blow which caused these injuries?

(Obj'd to.)

A. On the starboard side. It struck her about 6 or 8 foot from the stem, and went clear to the wheel-beam, and the wheel-beam stopped it. She struck the wheel-beam so hard that it broke the knee under the wheel-beam.

Q. Was any more work done on that boat at that time than was necessary to repair the damage caused by that collision?

(Obj. to.)

A. No, sir.

Cross-examined.

Q. What is your business?

A. Police officer.

Q. How long were you in the employ of McGinness & Co., and when?

A. Four years and two months—from May, 1853, to July, 1857.

13 Q. Had you done any repairs to the Hector from December, 1853, to the time you made these repairs?

A. Yes, sir. Had on the dock once or twice, and used to repair her wheels when she would come up.

Q. What part of the vessel did you repair in that time?

A. Caulked her bottom, put a piece of new stem into her, repaired her wheels.

Q. Anything else?

A. Sometime when she would come up after having a tow, her chafing-pieces would be replaced. I know of nothing that we did.

Q. What was the size of the beams you put in there?

A. I think they were 6 × 8.

Q. What was the size of the old beam?

A. The same.

14 Q. What was the age of this vessel?

A. I don't know.

Q. What had been her name?

A. All the names that I knew her go by were the Zachariah Taylor and the Hector.

Q. Do you know of her being sent to Mexico?

A. No, sir; I do not. I recollect of seeing her go down the bay rigged as a bark. Where she went I don't know.

(Obj'd to.)

Q. Were her guards cut off?

A. I don't know.

Q. Were you near enough to see if her guards were cut off?

(Obj'd to, objection sustained, and exception.)

Q. How many beams were put in forward of the boiler beams?

15 A. I did not count them forward, but there were 22 beams in all; I don't count the short—the guard-beams.

Q. Have you any original memorandum of the 222 days' work mentioned in the bill shown you?

A. I have lost my book that I kept the carpenters' time in, but I gave the time in every night at the office, and know it to be correct. The caulkers' time I have a memorandum of in my pocket now.

Q. Was an entire new deck put on the vessel forward of the wheel?

A. Yes, sir.

Redirect.

Q. Have you made a search for the book in which you kept the carpenters' time?

A. I have, and could not find it.

16 Q. Do you know the caulkers' time to be correct?

A. Yes, sir.

Q. Did you see the old beams which were replaced by McGinniss & Co. at this time?

A. Some of them—yes, sir.

Q. State whether they were spliced beams or not.

A. I don't know; can't say whether they were or not.

THOMAS HUFF.

Subscribed and sworn to before me this 3d day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

17 Henry Dougherty sworn for libellant:

Q. What is your business?

A. Shipwright.

Q. What firm were you a member of in August and September, 1854?

A. McGinniss & Co.

Q. Do you recollect the injuries done to the Hector by a collision with the Mabey in that season?

A. I saw the boat when she came up to the dock.

Q. When did you commence work on her?

A. In August, 1854.

Q. Look at the bill now shown you, and say if that is the bill for the job done at that time.

(Obj'd to.)

A. That is the bill, and it has been paid by Mr. Sturgis.

Q. How much?

18 A. $1,312 08.

Q. When was it paid?

(Obj'd to.)

A. It was short time after the work was finished—about the first of November.

Q. What do you know about the quantity of lumber which was used in that job?

A. I know it is all specified in the bill as used on the steamer Hector.

Q. State whether any more work was done by your firm than was necessary to repair the injuries done by that collision.

(Obj'd to, as it is not shown what injuries were done by the collision, and the witness has no knowledge of the collision. The question is otherwise improper, asking the opinion of the witness upon a subject which is the province of the commissioner.)

19 A. There was nothing more done to my knowledge.

Q. Were those the usual and fair prices, for work of that kind at that time, as charged in the bill?

(Obj'd to.)

A. That is the price of materials and wages at that time.

Q. Did you see this work done yourself?

A. I was there occasionally; my partner was generally there all the time.

Cross-examined.

Q. How do you know that all the lumber charged was used?

A. I seen it all going on board at different times.

Q. What was the size of the beams put in?

A. The scantling were 8 by 8 or 6 by 8, to the best of my recollection.

20 Q. What was the size of the old beams?

A. I think they were 6 × 8.

Q. Were any of the old beams used in the repairs?

A. Not that I know of.

Q. Was there an entire deck put on her forward of the wheels?

A. Yes, sir.

Q. When did you commence work upon her?

A. In the month of August.

Q. What time?

A. The latter part of August.

Q. Was it on the 29th?

A. I can't say that now.

Q. Did you commence work on her as soon as she came up to the dock?

A. I think it was the next day that we sent the men aboard.

Q. How many day's work was done upon that vessel?

21 A. There was 222 days by carpenters and caulkers, and two boys 12 days each.

Redirect.

Q. When you buy timber and sell it, you buy and sell by the inspector's mark, do you not?

A. We do.

HENRY DOUGHERTY.

Sworn to before me this 3d day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Daniel Coger sworn for libellant:

Q. What was your business in 1854?

A. Ship-joiner.

Q. What work did you do as ship-joiner on the steamboat Hector in August of that year?

A. I joined deck plank, planed up beams, knees, plank-sheers, and some little work underneath the deck which was taken away
22 for the purpose of carpenters' repairs. The bill is principally a labor bill.

Q. Look at the bill now shown you, and state whether that is a correct bill of the labour and materials furnished by you to that boat towards repairing damages done that boat by collision.

A. I should judge it had been a collision by the appearance of the wreck. This bill is for the labor and material to put that boat in good order.

Q. Has it been paid you by Mr. Sturgis?

A. It was.

Q. Where was she lying at the time that work was done?

A. At the foot of Gouvernear st., East river.

Cross-ex'd.

Where were the plank put charged in the bill?

23 They were used for bulkheads below and some on deck front of the wheel-house.

Q. Were those put in below new bulkheads?

A. No, sir. Taking them down would break more, and we would have to replace those broken by new.

Redirect.

Q. Was it necessary to take down the bulkhead in order to put in the deck beams, deck plank, and knees?

A. It was. All bulkheads are fastened to beams.

DANIEL COGER.

Sworn to before me this 3d day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Stephen Roberts sworn for libellant:

Q. What was your business in Sept., 1854?

A. Shipsmith.

24 Q. Did you do some blacksmithing work on the steamboat Hector in Sept. of that year?

A. Yes, sir.

Q. Look at that bill, and say if that is your bill of the work you did to that boat in repairing damages done by collision.

(Obj'd to.)

A. Yes.

Q. Was you aboard the boat yourself?

A. Yes, sir.
Q. State what injuries she had received.
A. She looked to me as if something had run into her.
Q. Has this bill been paid?
A. Yes, sir; by Mr. Sturgis.
Q. What was it for?
A. The iron-work was to fasten the beams and the knees
25 and all the other wood-work that had to be put together.
Q. Was any of it unnecessary to repair the damage?
A. I think not.
Q. The bill is your handwriting?
A. It is, and made at the time.
Q. Were those the usual and fair prices for work at that time?
A. Yes, sir.

STEPHEN ROBERTS.

Sworn to before me this 3d day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Adjouned to June, 9th at 11 a. m.

June 9th. Adjourned to June 15, at 11 a. m.

June 15th. Present: Proctors for respective parties.

Elisha Baker sworn on part of lib'l't:

26 Q. What is your business?
A. Shipwright.
Q. Where is your place of business?
A. 251 South st.
Q. What was your business in Sept., 1854?
A. The same.
Q. Look at Exhibit No. 1, and state whether those prices charged in that bill were the usual and fair prices in Sept., 1854, for such articles and labor.
(Obj'd to as leading and improper. Question waived.)
Q. What was the usual and fair price in Sept., 1854, in this city, for white pine deck plank and yellow pine beams in repairing vessels by a shipwright?
(Objected to, overuled, and exception.)
27 A. From 4 to 5 cents a superficial foot. For oak wedges, 6 cts. a pair; for oak plank, from 5 to 6 cts. per foot; for 5 inches hackmatack knees, from $1 50 to $2 each; that is the price of them now, but I can't tell what it was in 1854. Oak knees, 5-inch, $4 each; for oak knees, 8-inch, from $10 to $15 each—that is, white oak; spikes, from 8 to 10 cts. per lb.; oakum, from 11 to 13 a lb., according to quality; Connecticut cut oak, 7 cts. a foot; pitch, $3 50 a bbl.; pitch mops, half a dollar each. I never charged anything for floating staging.
Q. How much a day for the carpenters' and caulkers' labor in 1854?
A. I can't tell without looking at my books. It is now 21 shillings. There was a time when it was 26 shillings and sixpence, but whether it was in 1854 or 1855 I can't say.

Q. Was your business in 1854 an extensive business in this line?
A. I have had from 300 to 500 bills a year.

28 ELISHA BAKER.

Cross-ex'd.

Q. Does your value of knees, as testified to in your direct examination, depend upon their size?
A. Not altogether.
Q. What then?
A. Size, quality, and shape.
Q. Does your value of plank depend alone upon the superficial measurement?
A. It does.

Redirect.

Q. What was the value of first-quality pine plank for deck plank in 1854?
A. Five cents.
Q. For oak plank?
A. Six cents.

E. BAKER.

29 Sworn to before me this 15th day of June, 1859.
KENNETH G. WHITE, *U. S. Com'r.*

James Edsall sworn on part of libellant:

Am shipwright, and have been engaged in business twenty-seven years in this city, and our offices 54 West st. and 252 South st. I am perfectly familiar with the business in all its branches. Our business in 1854 was about $100,000 a year.

Q. What in 1854 was the usual and fair price charged for white pine deck plank, best quality, used in repairing vessels?
(Obj'd to, overruled, and exception.)
A. Five c'ts per superficial foot
Q. Yellow pine beams?
A. Five cents per superficial foot.
Q. Oak wedges?
A. Four cents.

30 Q. Oak plank for fender pieces?
A. Good plank were six cents per superficial foot.
Q. For five-inch hackmatack knees?
A. If they were square, $3 each, and if in-square, $3 25 each. Forward amidships any vessel requires in-square knees.
Q. For 5-inch oak knees, used one each side forward of the wheel, out-square knees?
A. $4 50 each.
Q. An 8-inch oak knee out-square, pretty long body and arm?
A. Was worth at that time $12.
Q. For spikes?
A. Eight cts. per lb.

Q. Oakum?

A. From 11½ to 12½ per lb., according to the customer.

Q. What would be a fair chestnut plank used for the chocks and waterways?

A. If I used chestnut, I should vary the charge—the charge from oak or pitch pine—5 cts.

Q. Pitch?

A. My impression it was $3 25 per bbl.

Q. Pitch mops?

31 A. Fifty cents each.

Q. For float-stages?

A. Fifty cents a day. It is common to charge for float-stages, but it is not invariable.

Q. For carpenters' and caulkers' time in Sept., 1854?

A. Never less than 25 shillings and sixpence, and never more than 26 shillings.

Q. For boys?

A. That depends upon their efficiency and the length of time they have been apprentices; from $1 25 to $1 50.

JAMES EDSALL.

Sworn to before me this 15 day of June, 1859.

KENNETH G. WHITE, *U. S. Com'r.*

Peter McNamara sworn for libellant:

Have been shipwright for over forty years in this city; accustomed to repairing vessels, and am acquainted with vessels in all its details; am acquainted with the prices of timber and materials used in

32 repairing vessels, and the price of labor in this port in 1854.

Q. State what was the usual and fair price in this city for white pine deck plank?

A. Five cents per foot.

Q. Yellow pine beams?

A. Five cents.

Q. Oak wedges?

A. Four cents apiece.

Q. Oak plank?

A. Six cents.

Q. Five-inch hackmatack knees, mostly in-square?

A. From $3 to $3 50 each.

Q. White oak knees, 5-inch out square?

A. From $4 50 to $5 each.

Q. Am. oak, out-square, 8-inch knee?

A. From $12 to $13.

Q. Spikes?

A. Eight cts. per lb.

Q. Oakum?

A. Twelve and a half cents per lb.

Q. Chestnut plank used for chocks, &c.?

A. Same price as pine.

Q. Pitch?
A. $3 25 per lb.
Q. Pitch mops?
A. Fifty cents each.
Q. The use of float-stages?
33 A. Fifty cents a day—always a proper charge, and generally charged.
Q. Carpenters' and caulkers' wages?
A. From $3 to 26 shillings per day; boys' wages from 9 to 12 shillings per day.
Q. To what extent have you been engaged in the repairing of ships?
A. We did a very heavy business in former years, but not so much latterly.

P. McNAMARA.

Sworn to before me this 15 day of June, 1859.
KENNETH G. WHITE,
U. S. Com'r.

Patrick McGinness sworn on part of libellant.

Was ship-carpenter in 1854; was one of the firm that repaired the steam-tug Hector.

Q. What was the matter with her in September, 1854, when you repaired her?
(Obj'd to, overruled, and exception.)
A. From her stem to her wheel-beam, all the beams that extended over her hull were broken, and the guards on the starboard
34 side were carried away. The beams the same on the starboard side, and the knees outside were all carried away on the starboard side, and some knees inside were split and broken. We had to take all the deck up to replace those beams, and all the knees on the larboard side had to be split off, and the guards had to be taken off on the larboard side. On the larboard side we took off the solid work forward of the wheel some 4 or 5 tons of timber. It would take three times the expense to put up the starboard side solid, like the larboard side, and so we took it all off on the larboard side to make it correspond with the starboard side, to save expense.
Q. What was the condition of the starboard side of the vessel forward of the wheel-beam when you repaired her?
A. It was carried away.
Q. State what, apparently, had been the cause of the damage you repaired.
(Obj'd to, overruled, and exception.)
35 A. Something or other had struck her; I don't know which vessel.
Q. Look at Exhibit No. 1, and state whether that is your bill for repairs done on that vessel at that time.
(Obj'd to.)
A. It is.

Q. Has it been paid?
(Obj'd to.)
A. It has.
Q. Were those articles and services mentioned in that bill rendered by you and furnished by you at the time in question?
A. They were.
Q. Was there any more work done by your firm at that time on this vessel that was absolutely necessary to repair the damage which the steamboat had sustained by the blow?
(Obj'd to.)
A. Nothing more than this larboard, and that was taken off to save expense. It is necessary to make both sides of a steamboat alike.
Q. Was this work done with all reasonable dispatch?
36 (Obj'd to as leading, objection sustained, and exception taken.)
Q. How long were you engaged in making the repairs?
A. I can't say exactly; I know it was over 12 days.
Q. Was there any delay in making these repairs?
A. There was not.

P. McGINNESS.

Sworn to before me this 14 day of June, 1859.
KENNETH G. WHITE,
U. S. Com'r.

Isaac Weed affirmed for libellant:

Was bookkeeper in 1854 for John H. Elliott. He was a painter; is dead now.
Q. Do you know of Elliott's doing any work, in 1854, on the steamboat Hector?
A. Yes, sir.
Q. What?
A. He painted over some repairs.
Q. Look at Exhibit No. 2, and say whether for the work he did.
(Obj'd to, overruled, and exception.)
37 A. It is.
Q. Was it paid?
A. It was.

Cross-examined.

Q. How do you know that bill to be correct?
A. From our time-book and daybook.
Q. Whose time-book and daybook?
A. John H. Elliott's, which I kept.
Q. Did you make those entries from your own knowledge, or from the time and materials given to you by others?
A. We usually kept the boy in the shop to weigh out the things

and give me account. I kept the account of time myself, as men came in at night.

ISAAC WEED.

Sworn to before me this 15th day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Joseph T. Martin sworn for libellant:

Was in towing business in 1854; was agent and manager; know steam-tug Hector.

38 Q. State whether or not there was or not, in the latter part of August or first of Sept., 1854, a demand for the services of such boats as the Hector in this port.

A. There was.

Q. What business was she engaged in?

A. Towing vessels to and from sea and about the harbor of New York.

Q. Do you recollect the accident between the Hector and Maybey in 1854?

A. Yes, sir.

Q. State whether or no the Hector was in constant employment at that time.

A. She was quite busy at that time.

Q. State the value of the Hector per day at that time, with her crew and officers?

A. I should say from $100 to $120 per day.

Cross-ex'd.

Q. What would she have been worth per day in the fall of 1854 to charter?

(Obj'd to.)

39 A. If I wanted to charter a boat of that kind I should have been willing to give $100 per day.

Q. Had you any interest in the Hector or her earnings, in 1854?

A. No, sir; I had not.

Q. Did you not pay a bill to the Allaire Works for work done on the Hector in 1854?

A. No, sir.

Q. How long have you known the steamboat spoken of by you as the Hector?

A. I should think about eleven years.

Q. Has she gone by any other name?

A. Her original name was the New Brighton. She was afterwards known by the name of Duncan C. Pell. I have been told she was called the Pounset. Zachary Taylor is her present custom-house name.

Redirect.

Q. State the extent of your acquaintance with the towing business.
A. I am one of the oldest hands engaged in the towing of vessels to and from sea in the city of New York.

JOSEPH T. MARTIN.

Sworn to before me this 15 day of June, 1859.
40 KENNETH G. WHITE,
U. S. Com'r.

Adjourned to the 16th of June, at 11 a. m.

June 16th. Present: Counsel for respective parties.

Joseph Tickham sworn for libellant:

Was a marine surveyor in 1854.
Q. Did you make a survey on the Hector in August, 1854?
A. I did.
Q. Is the bill now shown you, marked Exhibit No. 5, your bill for services?
(Obj'd to, overruled, and exception.)
A. It is.
Q. Is that the usual, fair, and legal price for such services?
A. It is.
Q. What is the usage among ship-owners with reference to having surveys of damages to vessels?
(Obj'd to, overruled, and exception.)
40 A. The usage is to have surveys invariably in cases of collision or accident at sea.
Q. State to the commissioner where the vessel was when you made the survey.
A. She lay in the East river, at a pier near the Hook.
Q. On what day did you make the survey?
A. 29th of August, 1854.
Q. Please state the condition in which you found the vessel.
A. I found a number of beams broken—11 or 12 I think there were; a number of knees broken—hanging knees and standing knees; some of the joiner-work and deck-work broken; something about the guards broken, I think; on the port side, I think it was, but am not sure.
Q. State whether or no it would be necessary, in repairing that damage, to take up and replace the deck forward of the wheels.
A. Yes, sir; I think I so recommended in my report to take up some part of the deck forward of the wheel-house. Not being
41 a mechanic I can't say whether it would be necessary to take it all up, not being present when the repairs were made.

Cross-ex'd.

Q. At whose request was the survey made?
A. Capt. Russell Sturgis.

Q. In the consideration in which you found the Hector, could she have been used as a tow-boat safely?

A. I think not at all.

Q. Why not?

A. She was too much mutilated.

Q. How do you know that you made your survey on the 29th of August, 1854?

A. By referring to my book of records made at the time.

Q. How long were you engaged in making the survey?

A. Probably an hour and a half.

JOSEPH TINKHAM.

Sworn to before me this 16 day of June, 1859.

KENNETH G. WHITE,
U. S. Com.

43 James A. Renoud sworn for libl'nt:

Was engineer of steam-tug Hector in 1854.

Q. How long had you been connected with her at that time?

A. Some 6 or 8 months.

Q. Do you recollect the collision between the Hector and the Mabey in August of that year?

A. Yes, sir.

Q. Was you on board at that time?

A. Yes, sir.

Q. State what damage was caused to the Hector by the collision with the Mabey.

A. One of her guards was cut off, hull and deck damaged, such as deck beams cut off, plank-shears, knees inside and out, guard-braces all destroyed.

Q. Do you recollect how many beams?

A. 12 or 13.

Q. Do you recollect how many knees?

A. Double the amount of beams.

Q. How as to the larboard side?

A. There were some 3 or 4 beams broken or twisted off, and
44 double the amount of knees.

Q. What shipwrights repaired that damage?

A. McGinniss.

Q. How many days were occupied in repairing that damage?

A. 14 or 15, I think.

Q. Could she be used in her business while that damage was being repaired?

A. No, sir.

Q. Was you connected with her and about her while that damage was being repaired?

A. I was, and superintended the blacksmith work.

Q. What were her officers and crew engaged doing while the vessel was being repaired?

A. Assisting in repairing her.

Q. Doing what?

A. Helping the carpenters, putting in bolts and screwing in bolts, driving spikes, going to the blacksmith shop backwards and forwards, fetching new and taking old bolts to get repaired.

Q. State what was the condition of the Hector just before
45 the accident?

A. She was in good running order and seaworthy.

Q. State whether any more work was done at this time to the Hector than was necessary to repair the damage done to the Hector by the collision.

(Obj'd to, overruled, and exception.)

A. No more work, not a cent's worth, than was necessary to repair that damage.

Cross-ex'd.

Q. In whose employ are you now?

A. Am out of business at present.

Q. How long since you left the employ of Mr. Sturgis?

A. Between 3 and 4 years.

Q. What day, month, and year was it that the collision occurred between the Hector and Mabey?

A. On the 27th or 28th of August, 1854.

Q. After the collision, where did you run the Hector to?

A. We done several jobs about the harbor.

Q. How many days intervened between the day of the col-
46 lision and the day the survey was made by Capt. Finkham?

A. Some three or four days.

Q. What was done with the Hector between the day of the collision and the day of the survey by Capt. Finkham?

A. I think she run one or two days before the survey was made.

Q. What became of her starboard guard that you say was cut off?

A. It went afloat outside the Hook; some of it went on the Mabey's forward deck.

Q. Where were the starboard beams cut off by the collision?

A. Close to the hull, and took some of her hull with it.

Q. What part of the hull?

A. The planking; top part.

Q. Her planking, did it run fore and aft?

A. Yes, sir.

Q. On which side of the Hector was it that came in collision with the Mabey?

A. Starboard.

Q. What part of the beams on the larboard side of the Hec-
47 tor were twisted off, as sworn to on your direct examination?

A. Right even with the hull; the guard part.

Q. Where, in reference to the wheel?

A. Forward of the wheel.

Q. How many deck hands were on board of her at the time of the collision?

A. Three.
Q. Does that include the pilot?
A. No, sir.
Q. What was her consumption of coal per 24 hours when she was engaged in towing?
A. Take it on an average of light work, not less than 4 tons a day.
Q. What do you mean by a day?
A. Going to Sandy Hook and back again?
Q. What was the speed of the Hector in light work?
(Obj'd to, objection sustained, and exception.)
Q. How much coal would she use per 24 hours in heavy towing?
A. From 12 to 14, to put her down to her work for the 24 hours.

48 *Re-direct.*

What was the average consumption of coal per day of this boat in her ordinary business?
A. Four ton.

Re-cross.

Q. What do you mean by a day?
A. Twenty-four hours.
Q. Do you make a distinction in your answer of what a day is on your direct and cross-examination?
A. I don't make any distinction.
Q. What was the ordinary day's business of this boat?
A. Harbor towing, Sandy Hook towing.
Q. Give us the details of an ordinary day's work of this boat.

JAMES A. RENAUD.

Sworn to before me this 16 June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Emerald T. Wilson sworn, for libellant:

Was in the towing business in 1854. I had a general acquaintance with it at that time.

49 Q. Were you agent for boats; and if so, how many?
A. Not exactly as agent, but recognized in that capacity for two boats.
Q. Did you know the steam-tug Hector?
A. Yes, sir.
Q. How was the demand for the services of such a boat in August and September, 1854?
A. The demand was very good.
Q. What was the value of that boat at that time, with crew, provisions, and coal necessary for her ordinary business?
A. Her gross receipts would be in the neighborhood of $100 per day. Sometimes it would exceed that, and sometimes fall short.

Q. What was the value of that boat in this harbor at that time for, say. 14 days?

(Obj'd to, overruled, and exception.)

A. It is my opinion that she could readily command $100 per day to charter for 14 days.

Cross-ex'd.

50 Q. Would that charter include the manning of the vessel and her fuel by the owner?

A. Yes, sir.

Q. How long have you known the Hector?

A. About eight years.

Q. What boats were you recognized as the agent of?

A. The Ocean and Wave.

Q. How long?

A. Pretty much all the time from then till now.

Q. How long before August, 1854?

A. Commencing about the year 1852.

Q. Had the guards of the Hector been cut off in any way to fit her for a sea-going vessel before 1854?

A. I don't know whether they were cut off.

EMERALD T. WILSON.

Sworn to before me this 16 day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Jeptha P. Parks, sworn for libellant:

Was proprietor of tow-boats in this port in 1854.

51 Were you acquainted with the tow-boat business and the rates of towing in this harbor, and the value of tow-boats in 1854?

A. Yes, sir.

Q. What was the extent of your acquaintance with that business?

A. I have been in the business for the last twenty years. I have owned boats since 1850, and been master since 1842.

Q. Did you know the steam-tug Hector at that time?

A. Yes, sir.

Q. What business was she engaged in?

A. In ship towing.

Q. How was the demand in August and Sept., 1854, in this harbor for the services of such a boat as the Hector?

A. Outside towing at that time was very good; that was her business.

Q. What was the value of that boat in Aug. and Sept., 1854, in this harbor per day, manned and furnished for her ordinary business?

A. I suppose she would do a business of $2,500 a month.

Q. How many days do you count for a month?

52 A. About 26 running days in a month.

Q. What was the value of that boat for 14 days in her ordinary business at that time in this port?

A. I think she could have been chartered for $100 a day.

JEPTHA B. PARKS.

Sworn to before me this 16 day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Solomon Thomas, sworn for libellant:

Was in the towing business in 1854.

Q. What was the extent of your acquaintance with it?

A. I was part owner of a boat, and in the business at that time.

Q. Did you know the steam-tug Hector?

A. I did.

Q. How was the demand in this port for the services of such a vessel in the month of Aug. and September, 1854?

A. The demand was good.

53 Q. What was the value of that tug at that time per day, when manned and furnished for her ordinary business?

A. From $95 to $100 per day.

Cross-ex'd.

Q. What boat was you part owner in in 1854?

A. C. Durant.

Q. Were you on board of her?

A. Not steady.

Q. In what capacity?

A. I was doing her business ashore for her.

Q. Have you since 1854 been engaged in that business?

A. Yes, sir.

Re-direct.

Q. What do you mean by business ashore?

A. Getting her work and collecting her bills, &c.

SOLOMON THOMAS.

Sworn to before me this 16 day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Charles Hazzard, sworn for libellant:

Was steam-tug master in 1854.

54 Q. What was the extent of your acquaintance with the steam towing business in this harbor in that year?

A. I have been engaged in it since 1837.

Q. Are you acquainted with the business in all its details?

A. I am acquainted with it in every particular.

Q. What boats have you commanded?

A. The Jacob Bell, the Yatcht, Duncan C. Pell, Ajax, Goliah, Achilles, Titan, and Wm. H. Webb.

Q. How was the demand for the services of such a boat as the Hector in this harbor in Aug. and Sept., 1854?

A. It was very good.

Q. What was the value of the steam-tug Hector per day, for 14 days, in Aug. and Sept. of that year in her ordinary business?

A. I suppose they ought to be over $100 a day. The reason is, I considered the services of the Leviathan, that I commanded, as worth from $150 upwards.

55 Q. What would the steamer Hector have been worth per day at that time to charter for, say, 14 days?

A. I should consider $110 a day fair. I should consider that a fair charter; she would be worth that.

Q. What could the steamer Hector have earned in 14 days, during the months of August and September, in this port in the ordinary business in which she was engaged, manned and supplied?

(Obj'd to, overruled, and exception.)

A. I suppose she ought to have made $1,500 and upwards in 14 days.

Q. What do you mean by ought to have made in her ordinary business?

A. That, in her ordinary, she would have $1,500 and upwards.

Q. Did you know the Hector in 1854?

A. Yes, sir.

Cross-ex'd.

Q. In speaking of 14 days, do you mean working days, exclusive of Sundays?

56 A. I mean including Sundays.

Q. Are we to understand that the boat, in such estimate as made by you, would be at her work on Sundays?

A. No, sir. I consider that she would not be at her work on Sundays.

Re-direct.

Q. Did you ever command the Hector?

A. Yes, sir; under a different name, the Duncan C. Pell.

Q. Do you recollect when she came from the Gulf of Mexico?

A. Yes, sir.

Q. What alteration was made in her when you took from the government in reference to the guards?

A. There was no alteration made at that time. She had wide guards extend.

Q. How did her beams extend?

A. Her beams run all the way across, except in the wake of the boiler.

Q. What was done with her beams after that?

57 A. We fitted her out for California, and cut off about one-third of her guards; then framed up from *up from* the bilge to the edge of the guards and planked it like the outside of the vessel.

Q. What was done with her guards when she came back to fit her for towing again?

A. I think there was a wearing piece put in and her guard was straig'tened. I don't think anything was done with her beams.

CHAS. HAZZARD.

Sworn to before me this 16 day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Adjourned to the 17 June, at 11 a. m.

JUNE 17.

Present: Proctors for respective parties.

Thomas Huff, recalled on part of libellant:

Q. Did you see the beams that were broken by this collision?

A. Yes, sir.

58 Q. State whether those beams, any of them, were spliced beams.

A. No, sir. I saw every one of them.

(Witness, he desires to make an explanation of his evidence heretofore given. He says: In my testimony I gave the number of beams as 21. That was a mistake, there was not that number. I think, counting all the short beams, boiler beams, there would be 21. I think there were 13 long beams.)

Q. Was the timber which you stated was used, used to replace the beams which were broken?

(Obj'd to, overruled, and exception.)

A. Yes, sir.

Cross-ex'd.

Q. Did you not swear upon your direct examination, on the 3d of June, that there were 22 beams broke off on the starboard side, instead of 21?

A. I don't think I did. I might have done so.

59 Q. Were the beams on the starboard side broke off outside the hull?

A. No, sir; they were broke between the gunwails. The guard was all washed in.

Q. When did the Hector come to the yard for repairs?

A. I don't know when she come.

Q. Was it on the 29th of August, as stated in the bill which you swore to be correct?

(Obj'd to, objection sustained, and exception.)

Q. When did you commence work upon the Hector in Aug., 1854?

A. Either the 28th or 29th. I won't be certain which.

Q. When were her repairs completed?

A. The last work I done on her was on the 7th of Sept.

Q. Was there any other work done on her after that day in those repairs?

A. Not at my branch of business. The painters had the work after we got done.

Q. Do you know of any other work being done in the way of repairs after the time you have mentioned?

60 A. I don't know of any other.

Q. Did you not swear on your direct examination that you had the whole superintendance of these repairs?

A. I did. I swore that I was their foreman and had charge of all their work, and I was there on that boat every day she was repairing.

Q. By whom were the float-stages used?

A. The carpenters and caulkers.

Q. Had they finished their work on the 7th of Sept. when you left?

A. Yes, sir; I think they had. I think it was the 7th.

Q. Who furnished the lumber for the repairs?

A. McGinness & Co.

Q. Was there any lumber furnished by any other person to your knowledge?

A. No, sir; not to my knowledge.

Q. How many carpenters were employed in making the repairs, including yourself?

61 A. That I couldn't say, for I have lost my book.

Q. How many caulkers were employed?

A. I couldn't tell now.

Q. Were there to exceed 6 carpenters, all told, at work on that vessel in the repairs?

A. Yes, sir, and more; some days there would be 20.

Q. How long before the caulkers quit was it that the carpenters finished their work?

A. Some of the carpenters worked there as long as the caulkers did, finishing up the work.

Q. How many of the carpenters?

A. That I can't tell

Q. Do you know when the collision occurred between the Hector and the Mabey?

A. No, sir.

Q. How many deck beams did you put in the Hector, forward of the boiler?

A. I think it was 13.

Q. How many alongside the boiler?

A. 7 or 8.

Q. Any aft of the boiler?

A. No beams abaft of the boiler, I think.

Re-direct.

62 Q. How do you get at the date of leaving as the 7th of Sept.?

A. That was the last of any charge on my book against the vessel; my book is home.

Q. Have you found your book of caulkers' time?

A. I have.

Q. Look at that and state whether the entries there were made in your handwriting at the time.

A. Yes.

Q. After refreshing your memory from the book, state what was the last day that the caulkers worked on this boat at that job.

A. All the caulkers quit on the 8th except one, and he quit on the 9th Sept.

Q. Have you any memorandum of the time when the carpenters quit?

A. No, sir.

Q. Did the carpenters quit before or after the caulkers?

A. Some of the carpenters worked as long as the caulkers, and some might have worked longer.

Q. Were the bow chocks put on by the carpenters before or
63 after the caulking was done?

(Obj'd to, overruled, and exception.)

A. After the caulking was done in that part of the boat.

Re-cross.

Q. When did the caulkers commence work?

A. 6th of Sept.

Q. Had not all or the greater part of the carpenters' work been finished before the caulkers commenced?

A. The biggest part of it had. The deck was all laid before they commenced.

Q. How many painters were at work on the vessel?

A. I don't know.

THOMAS HUFF.

Sworn to before me, this 17th day of June, 1859.

KENNETH G. WHITE,
U. S. Com'r.

Ezra Buckman, sworn for libellant:

Am shipwright, and have been for twenty-five years in this port.

64 Q. What has been the extent of your business in that line?

A. I have been continually repairing vessels of all sizes.

Q. Are you acquainted with the prices of materials used by shipwrights in repairing vessels in Sept., 1854?

A. Yes, sir.

Q. State what was the usual and fair price for white pine deck plank, first quality, used in repairing boats.

A. 5 cents a foot.

Q. Yellow pine beams, first quality?

A. 5 cents a foot.

Q. Oak wedges?

A. Six cents a foot.

Q. Best oak plank?
A. Six cents.
Q. Five-inch hackmatack knees, out and in, mostly in square?
A. Three dollars apiece.
Q. Five-inch oak knees, out square?
A. Three dollars and fifty cents apiece—good knees.
Q. An eight-inch oak knee, out square?
A. Twelve dollars.
Q. Spikes?
65 A. A shilling a pound.
Q. Oakum?
A. From 10 to 12 cts. per lb.
Q. Chestnut, suitable for chocks and water-ways?
A. Worth as much as the oak.
Q. Connecticut oak plank?
A. Six cents a foot.
Q. Pitch, per barrel?
A. I think we charged $2 50 for it at that time.
Q. Float stages, for the use of them.
A. We charge from $1 to $1 50 for them, according to size.
Q. Pitch mops.
A. Fifty cents apiece.
Q. Carpenters' and caulkers' time per day?
A. Twenty-five shillings and sixpence.
Q. Boys?
A. From $1 to $1 50.

Cross-ex'd.

Q. How do you recollect the price of the articles sworn to in your direct examination?
A. By referring to my books.
Q. Does your book show the fair market value among dealers in those articles at that time?
66 (Obj'd to, overruled, and exception.)
A. In our line it does, among shipwrights.
Q. Does among dealers, known as ship chandlers?
(Obj'd to, objection sustained, and exception taken.)
Q. Does it as to lumber dealers?
(Obj'd to, ruled out, and exception.)
Q. Does it as to dealers in spikes and nails?
(Obj'd to, ruled out, and exception.)
Q. Does it as to dealers in ship timber?
(Same ruling.)

EZRA BUCKMAN.

Sworn to before me this 17th day of June, 1859.
KENNETH G. WHITE,
U. S. Com'r.

Patrick McGinness, recalled on part of libellant:

A. State what discription of white pine deck plank was used in this job.

67 A. The very best description.

Q. What kind of yellow pine beams?

A. Good quality.

Q. Oak plank?

A. Best quality.

Q. Describe the hackmatack knees.

A. They were full knees; no wanes in square and out square. There were more in square than out square; five inches when dressed.

Q. Describe the oak knees.

A. Out square five inches, twenty of them; one eight-inch oak knee.

Q. What kind of oakum was used?

A. The best navy spun oakum.

Q. Describe the item charged in the bill as 707 ft. elm.

A. It was chestnut in place of elm. It was used for bow chocks and water-ways; crooked timber.

Q. Describe the item 542 Connecticut oak.

A. For fender pieces; long lengths.

Q. Describe the boys.

A. One of the boys had been three years with me, and he could work as much as any man. The other had been about two

68 years with me. They could carry and lug around as well as a man.

Q. State whether the carpenters worked on this job.

A. Yes, sir.

Q. About how long after the caulkers finished?

A. About a day and a half.

Cross-ex'd.

Q. Do you know Captain Tinkham?

A. Yes, sir.

Q. Do you know of his making a survey of the Hector?

A. Yes, sir; I think he did.

Q. Had you done any work upon her before the survey?

A. I had done work upon her at other times, but not for this collision. I had not done work on this job before Captain Tinkham made the survey.

Q. Do you know how many painters were employed on this vessel?

A. I do not. I have seen four or five there at one time.

Q. Do you know when this collision occurred?

A. No, sir.

P. McGINNESS.

69 Sworn to before me this 17th day of June, 1859.

KENNETH G. WHITE, *U. S. Com'r.*

Charles C. Smith, sworn for libellant:

Was in coal business in 1854.

Q. In Sept. and August, 1854, what was the market price of anthracite Pittston lump coal?

A. From $5 to $5 50 per ton.

Cross-ex'd.

Q. Do you know what coal was on board the Hector in 1854?

A. Can't say that I do.

Q. What was the price of Lackawanna lump coal at that time in the market?

A. From $5 to $5 50; we sold once for $6.

Q. What was the market price in August and September, in New York, of Schuylkill lump coal?

A. Don't recollect.

Q. Was that coal in ordinary use on board steamboats in this harbor?

A. I think not.

70 Q. What was the ordinary kind of coal used by steamboats in the harbor of New York in Sept. and Aug., 1854?

A. Pittston and Lackawana.

Q. What was the price of Lackawana coal as compared with Pittston at that time?

A. I think not much difference.

CHARLES C. SMITH.

Sworn to before me this 17th day of June, 1859.

KENNETH G. WHITE, *U. S. Com'r.*

Libellant closes.

William Sweeny, sworn on part of respondent:

Am on steamer Joseph Johnson, am pilot, and have been for 25 years.

Q. Was you a pilot in 1854?

A. Yes, sir.

Q. Do you know the steamboat Hector?

A. Yes, sir.

Q. Was you on board of her in July and August, 1854?

A. Yes; part of July and part of August.

71 Q. In what capacity?

A. I was called a pilot; but then I was wheelman, just as all pilots are on those tow-boats.

Q. Do you know the steamer Mabey?

A. Yes, sir.

Q. Do you recollect a collision between the Hector and Mabey?

A. Yes, sir.

Q. When was it?

A. I think it was somewhere along about the middle of August.

Q. What did the Hector do, if anything, after that collision?

A. She towed a ship to sea that same day.

Q. What else did she do?

(Obj'd to, overruled, and exception.)

A. I wasn't aboard of her more than six or seven days. She went about the harbor. She could tow a ship on one side. She towed till I quit her.

Q. Was you on board of her in February, 1854?

A. I was not.

Q. Where was she when you left her?

A. She lay up at foot of Gouverneaur st. I think she run 3 or 4 days after I left her.

72 Q. Where?

A. Around the harbor, I suppose, and going down towards the hook.

Q. When the Mabey came in collision with the Hector, where did she strike her?

A. She struck about twenty-two or twenty-three feet from her bow, as near as I could tell.

Q. In what position was the bow of the Mabey at the time she came in collision with the Hector?

(Obj'd to, overruled, and exception.)

A. She struck the Hector on her guard, and the Hector rolled over, and the Mabey's bow went under the guard and slid aft till it struck the iron brace, which stopped her.

Q. What damage, if any, was done to the Hector in that collision? State particularly.

A. It broke two or three knees forward, and knocked the rest around so that they hung by the bolts, and broke her guard
73 loose, when she hit her and slid under; knocked off some of the ends of the beams.

Q. Those beams that were knocked off, what were the length of them? and did or did they not run across the whole deck?

A. Couldn't tell the length of them, for she had a solid chunk that answered for beams. Her beams had all been cut off forward of the wheel. She had knees that held the solid work up. These were in the place of beams, I suspect.

Q. What was the condition of the solid piece before the collision?

A. It was pretty weak; loose; we had to be very careful towing on that side. The fact is, her guards were poor on both sides.

Q. How was this solid work stayed?

A. It was fastened, and an iron brace from the hog frame.

Q. When was that brace put?

A. Don't know; before I came there.

Q. State what part of the deck plank, if any, were injured by the collision.

A. There was none on the deck; nothing more than on the guards?

74 Q. What injury; if any, was done on the larboard side of the Hector?

A. None.

Q. Did you examine the Hector after the collision, to see the extent of the damage done?

A. Yes, sir; I went down forward to see if anything was the matter.

Q. What damage did you find done to the Hector between decks?

A. Nothing that I could see.

Q. What number of beams or knees were injured on the larboard side by this collision?

A. None.

Q. What was the condition of the Hector's deck before the collision?

A. It wasn't none of the best. The guards were patched up with board. It was in pieces, so that we had to nail boards on the deck. A little sea would start the boards up, and we would have to nail them down again.

Q. What had been the business of the Hector during the month of August before the collision?

(Obj'd to, overuled, and exception.)

75 A. At the time I was on her it was towing between here and the hook; used to go down at 1 o'c. in the morning; some days we would get a tow, and some days we would not.

Q. Do you know what her earnings were during the month of August, 1854?

A. I couldn't say; it wasn't much. Sometimes we would run down there 4 or 5 days and not get tow.

Q. What injury, if any, was done to the deck frame of the Hector by this collision?

A. None that I know of; I couldn't see any.

Q. What was the damage done to the Hector by this collision?

(Objected to, objection sustained, and exception.)

Q. What amount would be required to put the Hector in the same condition she was before the collision?

(Question waived.)

Q. Do you know the cost of repairing vessels?

A. I know generally the cost, but I don't profess to be a judge.

76 Q. Have you had repairs done to vessels that were injured in the same manner that the Hector was injured?

(Obj'd to, ruled out, and exception.)

Q. What amount would be required to put the Hector in the same condition she was before the collision?

(Obj'd to, ruled out, and exception.)

Cross-ex'd.

Q. What business have you been engaged in since you left the Hector?

A. Steamboating, as pilot; have been pilot on the Johnson ever since, except about six months, when I was on the Erie R. R.

Q. How soon after this collision were you removed from the Hector?

A. I should think about three, four, or five days. I was shifted on to the Titan.

Q. When was you removed from the Titan?
A. I was on the Titan two or three days.
Q. Do you mean to be understood that you were the pilot
77 of the Titan?
A. Yes; I made one trip as pilot. I was sent there by Capt. Sturgis.
Q. Were you a witness for the defendant on the trial of this cause?
A. Yes, sir.
Q. Have you had any conversation with Mr. Clough since in relation to the damages?
A. No, sir.
Q. At whose request did you attend this examination?
A. Mr. Weed's man subpoened me just as we got in.
Q. How long had you been in the Hector before this accident?
A. I wasn't in her altogether quite a month.
Q. Was you in the wheel-house at the time of the collision?
A. Yes, sir.
Q. How soon after the collision did you go down on to the forward?
A. As soon as we got clear of each other; about five minutes. When I left the pilot-house I went directly below.
Q. How long was you below?
78 A. Two or three minutes.
Q. Did you go into the boiler-room?
A. No, sir.
Q. Then when you came back you came right back to the wheel?
A. Yes, sir.
Q. She had berths and ceilings below clear up to the deck, had she not?
A. She was ceiled up forward, but very few berths.
Q. Her beams were sealed forward there, were they not?
A. I think they had been, but there were some of them off, I think.
Q. Did you take a light?
A. I did when I went to look if there was a leak.
Q. Did any one go with you?
A. I think one of the deck hands went with me; won't be certain who it was.
Q. Did you go down forward again?
A. No, sir.
Q. Do you mean to be understood on your direct examina-
79 tion as swearing that none of the Hector's beams forward of the wheel extended beyond the hull?
A. They all extended beyond the hull.
Q. Did this solid work go clear into the hull?
A. No, sir.
Q. Were there not beams that extended out to the solid work?
A. There was; came out to it.
Q. How was this solid work fastened to the boat?
A. By braces and knees, and bolted to her wheel guard some how or other; I don't know how.
Q. Are not most all guards of such boats supported by iron braces?

A. They are most generally each side of the wheel.
Q. Did you see the damage repaired?
A. I wasn't aboard of her at that time.
Q. Were you ever after this collision under the larboard guard of the Hector?
A. I never was under it; I looked under it.
Q. When did you look under it?
80 A. I think it was the same day going up. I looked under it to see it was all right.
Q. Where did you stand when you looked under it?
A. I laid on my belly.
Q. Where was the boat when you did that?
A. Couldn't say exactly where she was; she was coming up from the Hook.
Q. The guards of the Hector had slat-work on, didn't they?
A. No, sir.
Q. What five days were those in August that this boat did no business?
A. I couldn't say.
Q. Were there five consecutive days in the month of August that she did no business?
A. I don't know.
Q. Were there four consecutive days in the month of August that she did no business?
A. I couldn't say in the month of August. I think there were three days.
Q. What three days were those?
A. I couldn't tell,
Q. Were they in the 1st, 2d, or 3d week in August?
81 A. I can't tell anything about the month of August.
Q. Do you call deck beams part of the deck frame?
A. I call the beams inside of the guards parts of the deck frame. I mean inside of the hull.
Q. Are not the beams under the guards part of the deck frame?
A. They are, providing they go all the way across.

Re-direct.

Q. What was the speed of this boat?
(Obj'd to, ruled out, and exception.)
Q. Was any damage done to her deck or deck frame inside of her hull? If so, state what.
(Obj'd to.)
A. No, sir; not that I could see.

his
WILLIAM + SWEENY.
mark.

Sworn to before me this 17th day of June, 1859.
KENNETH G. WHITE,
U. S. Com'r.

Adj'd. New notice to be given.

SEPT. 9th, 1859.

82 Present: Mr. Benedict Proctor for lib'lant, and Mr. Van Vleck for cl'm't. Adjourned to Sept. 14, at 11 a. m.

SEPT. 14.

Present: Proctors for respective parties.

Henry B. Thomas, sworn on part of the claimant:

Q. Where do you reside?

A. Brooklyn.

Q. What is your business?

A. Ship joiner.

Q. In the course of your business have you been in the habit of repairing vessels injured by collision or otherwise?

A. Yes, sir.

Q. Did you see the steamboat Hector after the collision which she was said to have had with the Mabey?

A. Yes, sir.

Q. In what manner as to the deck beams should she, under the circumstances, have been repaired?

(Objected to, overuled, and exception.)

A. I did not see that damage; it was repaired before I see the vessel.

83 Q. Where the guards are broken off outside the hull, in what manner is it usual to repair them?

(Objected to, overuled, and exception.)

A. It is customary to put beams alongside the others.

Q. To what extent; how far across the deck?

A. That would depend on the judgment of the man that done the work.

Q. Is it usual for an injury, where the guards are broken off outside the hull, to put in new beams the whole width of the deck; and if so, for what part thereof?

(Obj'd to, overuled, and exception.)

A. I don't recollect of ever doing a job of that kind myself of running the beams clear across.

Q. Did you examine the repairs that had been made to the Hector?

A. Yes, sir.

Q. Did you make an estimate of the cost of the whole of those repairs?

A. Yes, sir.

84 Q. For what amount, at the price of labor and materials in August and September, 1854, could those repairs have been done?

(Objected to, objection sustained, and exception.)

Q. In your examination of the repairs, what examination did you give, if any, to the quantity of stuff used in making the repairs?

A. I measured the steamboat on deck with a tape line in the first place. To the best of my knowledge it is 66 feet from the forward wheel beam to the stern. She measures, if I recollect right, 35 feet

in width over all, and added them up, and that give me the number of feet.

Q. What did you do in reference to the deck beams?

A. I went below and looked at them.

Q. Did you ascertain their number? If so, state how many there were.

A. Seven long ones, to the best of my knowledge.

85 Q. Did you ascertain the quantity of feet in the beams? If so, state how many.

A. To the best of my knowledge, I did; 35 feet by 6×8 makes 188 feet in each beam.

Q. How many short beams?

A. Am not positive to the number, but I think four.

Q. Did you examine the knees; and if so, how many did you find put in?

A. Fifteen on the inside, that I supposed was new.

Q. How many on the outside?

A. I didn't look.

Q. Can you give us the number of feet of plank necessary to cover that deck?

A. It is in the neighbourhood of between three and four thousand feet.

Q. At the price of white pine deck plank, as charged by persons repairing vessels in August and September, 1854, what would it have cost for plank sufficient to cover the deck as used in making those repairs?

(Obj'd to, overruled, and exception.)

86 A. The price was five cents a foot; $178 50 in my figures.

Q. What in relation to the beams?

(Objected to, overuled, and exception.)

A. Five cents a foot. I have not the number of feet figured, but I have the gross amount.

Q. From the examination you gave the Hector, and from actual measurement and inspection, did you ascertain the cost and expense of making such repairs? And if so, state in detail what it was.

A. It would be worth $48 to tear her to pieces; 16 days' work, at $3 per day. I calculated 7 beams, 6×8, at five cents per foot, 188 feet in each beam, $65; 35 knees, at $5 each, $175; deck plank, deck 66 feet by 35 feet 3 inches thick, $178 50; oak for plank, shear-facing, and lining, 792 feet, I have got it five cents a foot, $39 60; spikes and bolts, $100; 72 days' work, at $3 per day, $216. This is all I had.

Q. What is the aggregate?

A. $822 10.

87 Q. Would that sum, in your judgment, cover all the expense of the repairs at the price of materials and labor in August and September, 1854?

A. To the best of my knowledge.

Cross-examined.

Q. There is always some waste in fitting timbers and plank, is there not?

A. Yes, sir.

Q. Could you pretend to be accurate in the number of days' work required to tear up old work without seeing it done?

A. No, sir.

Q. Did you ever repair an ocean-going steamer that had her beams broken off on the inner stringer or clamp in the bolt?

A. I repaired the steamer Dr. Kane, if you call her an ocean steamer. Her beams were broken off close to the hull; she was used towing round the bay; she is a small boat.

Q. Did you do all the work in the repairs of the Dr. Kane?

A. Yes, sir.

Re-direct.

How much of the deck was it necessary to plank on account of the collision between the Hector and Mabey?

88 (Obj'd to, and ruled out.)

If there were no deck plank injured by the collision inside the guard, what portion of the deck was it then necessary to cover anew?

A. If there wan't none of them injured you would want none you.

Q. In your estimate for labor; did you or did you not include the labor of caulking the deck?

(Obj'd to, sustained, and exception.)

Q. If the deck beams were not injured inside of the hull, in what manner should they be repaired?

(Obj'd to, objection sustained, and exception taken.)

Re-cross.

Q. When did you make this examination you have spoken of?

A. To the best of my knowledge, it was the fore part of this spring.

Q. Was you on board of her more than once?

A. No, sir.

Q. Who was with you?

A. Mr. Clough.

Q. And no one else?

89 A. No.

Q. Who pointed out to you the new beams?

A. We was both in the hold together; we both were examining together; I can't say that anybody pointed them out to me particularly.

Q. Did not Mr. Clough?

A. He might have done so.

Q., Do you go round the boiler?
A. I did not.

H. B. THOMAS.

Subscribed and sworn to before me, this 14 day of September, 1859.
KENNETH G. WHITE,
U. S. Commissier.

Benjamin C. Terry, sworn on part of claimant:

Q. What is your business?
A. Steamboat and vessel builder.
Q. In the course of your business have you repaired steamers and vessels injured by collision and otherwise?
A. Yes, sir.
Have you examined the steamboat Hector?
A. Yes, sir.
90 Q. Does this diagram show a correct representation of her hull forward of her wheel beam?
A. It is a good representation of her as she was when I was aboard her some four months ago.
Q. Does it show accurately the number of beams in her forward of her wheel beam?
A. It shows the number of new beams forward of the boiler.
Q. Were there any old beams?
A. There were.
Q. Where were they?
A. They were forward of 7 new beams.
Q. Have you made an estimate of the expense of putting on a new deck forward of the wheel beam on board the Hector?
A. Yes, sir.
Q. In what manner was that estimate made?
A. I took the items of the new work, cost of the material, and of labor, what I would at any time been willing to contract for the job.
91 Q. What was the result of that estimate?
A. $800.
Q. Did you take into that estimate the expenses of knees, beams, plank, and other materials? and if so, state what.
A. I took the estimates of oakum, plank, knees, spikes, bolts, nails, boards, pitch. I believe that is all.
Q. Did you make any, and if any, what estimate for labor; and if so, for what object?
A. I estimated the labor according to the cost of the materials, as is usual in such cases.
Q. Do you recollect the number of days' labor you estimated for the work? if so, state it.
A. I do not, for that is not the way I calculated it.
Q. In your survey of the vessel before making the estimate, what parts of her did you examine?

A. I examined her deck, her beams below, knees, her guards. I believe that is all.

Q. In the case of a collision where the beams are broke off outside the hull, what is the usual manner of repairing the beams and
92 the deck?

(Same objection as before.)

A. The usual manner is to run beams alongside the broken beams through the strings and clamps inside of the hull from three feet to the centre of the boat, as the case may be.

Q. What would the expenses of the repairs of the Hector have been if made in that manner, as compared with manner in which it was made?

A. I cannot give a positive answer on that.

Q. Would it have been more or less?

A. Less.

Cross-examined.

When did you make your examination?

A. About four months ago.

Q. Where did she lie then?

A. At the foot of Broome or Delancey st.

Q. Who was with you?

A. Mr. Clough.

Q. And nobody else?

A. No, sir.

Q. Did you go around her boiler?
93 A. No, sir.

Q. Did you ever see the injuries done to this vessel by the collision?

A. No, sir.

Q. In your estimate did you charge for spliced beams?

A. No, sir.

Q. How did you, in your estimate, calculate to repair the beams?

A. Put them in the same as I found them.

Q. How much, in your estimate, do you allow for oakum?

A. About $8.

Q. How much for plank?

A. Forty dollars a thousand. Can't say now how many thousand.

Q. How much for pitch?

A. $2 50.

Q. How much for spikes?

A. $50.

Q. How much for bolts?

A. $50.

Q. How much for nails?

A. I don't know.

Q. How much for boards?

A. Don't know.

Q. Blacksmith's bill?

A. Don't know.

Q. Caulkers?
94 A. Don't know.
Q. Painters?
A. Don't know.
Q. Carpenter's time?
A. Don't know.
Q. How much for oak?
A. Don't know.
Q. Do you know the condition of the Hector before she was injured?
A. No, sir.
Q. Do you know that she was in the same condition when you examined her that she was when she was repaired by McGinness.
A. No, sir.
Q. You make your estimate founded upon your examination alone, do you not?
A. I did not make it on the examination alone.

Re-direct.

Q. What became of your estimate?
A. It is home, I believe, amongst my old papers somewhere.

BENJ. C. TERRY.

Sworn to before me this 15th day of September, 1859.

KENNETH G. WHITE,
U. S. Commissioner.

95 Adj'd to the 15th inst. at 10 a. m.

SEPT. 15th.

Present: The proctors for the respective parties.

David Lampman, sworn for claimant.

Q. What is your business, and how long have you been engaged in it?
A. A boatman, and have been engaged in different capacities for the last 27 years.
Q. Where were you in August, 1854?
A. On board the steam-tug R. L. Mabey?
Q. In what capacity?
A. Master.
Q. Do you know of the collision between the Hector and the Mabey?
A. I do.
Q. State the day and month, if you can, when it occurred.
A. I can't state the particular day; it was between the 10th and 14th August, 1854.
Q. In what manner was the Hector struck by the Mabey?
A. The collision was fore and aft.
96 Q. State the particulars as to the manner of the collision and the effect produced on the Hector.
(Obj. to, sustained, and exception.)
Q. Did you see the Hector at the time of the collision?

A. Yes, sir.

Q. What effect was produced upon the Hector by the collision?

A. The Mabey's nose went under her guards and scaled the deck beams.

Q. Were any of the deck beams broke; if so, how many and where broke?

A. There were pieces from the deck beams outside of the hull lying on the deck of the Mabey; whether there were any deck beams broken entirely or not is more than I can say.

Q. What part of the hull, if any, of the Hector was injured by the collision?

A. There wasn't any to my knowledge, merely the guard.

Q. What part or portion of her deck-plank were injured?

A. I saw none.

97 Q. What was the condition of that part of the deck beams you saw in the deck of the Mabey.

A. They were rather decayed.

Q. Which side of the Hector was struck by the Mabey?

A. The starboard side.

Q. How was the larboard side of the Hector affected by the collision?

A. Not at all.

Q. What effect, if any, had the blow fore and aft, spoken of by you on the hull of the Hector?

A. Not any, to my knowledge.

Q. Could it have affected the hull? and if so, state how.

(Obj'd to, overruled, and exception.)

A. It could not effect it to my knowledge, only the guard; the hull wasn't injured.

Q. How long had you known the Hector before the collision?

A. I have known a boat they called the Hector, if my memory serves me right, since 1837.

Q. Is that the Hector that had the collision with the Mabey?

A. My impression is that it is.

98 Q. What was a fair sum per day for the charter of the Hec- in August and September, 1854, exclusive of her expenses?

A. From $25 to $30, exclusive of her expenses.

Q. What was her expenses? state if you know.

A. I do not know what her expenses were.

Q. Do you know of any injury sustained by her in a collision in January, 1854?

(Obj'd to, overruled, and exception.)

A. Not of my own knowledge, only from what I have heard.

Q. Did you see the Hector after the collision and before any repairs?

A. I saw her come down the harbor with a vessel in tow the same afternoon, if my memory serves me right.

Q. Did you see her on any subsequent day?

A. I crossed her deck one day in the East river.

Q. When was this?

A. The exact date I cannot tell, but it was a short time after the collision.

Q. Where was she lying?

99 A. Near Market street; what pier I can't say.

Q. What was the condition of her deck plank at that time?

A. I saw nothing that was any way unusual for any old boat's deck.

Q. Did you go down into her hold?

A. Never was in her hold.

Q. Do you know how long she continued towing after the collision and before she was repaired?

A. Some two or three weeks.

Q. Did you see her after she was repaired?

A. Yes, sir.

Q. What was her value, if any, increased by putting on the new decks? If so, state what amount.

(Obj'd to, ruled out, and exception taken.)

Cross-ex'd.

Q. Did you go on board the Hector at the time of the collision?

A. No, sir.

Q. After the blow, where did you go with your vessel?

A. We cruised outside of Sandy Hook some time, and returned to New York in the evening.

100 Q. Was you on the larboard side of the Hector after the blow?

A. No other occasion than when I crossed her decks.

Q. Where were you going when you crossed her decks?

A. On some business ashore.

Q. Do you consider the deck beams as part of the hull when you say the hull could not have been injured?

A. No, sir; I do not.

Q. Was you not a part owner of the Mabey at the time of the collision?

A. I was, sir.

Q. How much was the Mabey worth per day at that time, exclusive of expenses?

(Obj'd to, overuled, and exception)

A. $20 I should have been glad to have taken for her and have her expenses paid.

Q. How much did you get for your eighth, cash?

(Obj'd to, overuled, and exception.)

A. Twelve hundred and fifty dollars.

Q. Was the Mabey a sea-going vessel?

A. She was used for the purpose of tuging in the harbor and outside to sea.

101 *Re-direct.*

Q. Where were you at the time of the collision?

A. On the forward deck of the Mabey.

Re-cross.

Q. Did you run at the time of the blow?
A. I have no recollection of it.

D. LAMPMAN.

Subscribed and sworn to before me this 15 of Sept., 1859.
KENNETH G. WHITE,
U. S. Commissioner.

Herbert Lawrence, jr., sworn on part of claimant.

Q. What is your business?
A. Ship-builder.
Q. Where?
A. Williamsburgh.
Q. Have you seen the steamboat Hector?
A. I have.
Q. Have you examined her deck and hull, and seen the repairs put upon her since the collision with the Mabey, in consequence of the collision with the Mabey?
102 A. I saw the repairs that I was told was put on in consequence of her collision with the Mabey.
Q. What were those repairs?
(Obj'd to, objection sustained, and exception taken.)
Q. Did you make an estimate of the expense of putting on a new deck forward of the water-wheel, including beams and other fixtures, on board the steamer Hector?
A. I did, sir.
Q. What was that estimate? State the particulars.
(Obj'd to, overuled, and exception.)
A. I estimated 1,400 feet of oak for plank shears, facings, lining, and fender, at 5 cts. per foot, $70; 1,372 ft. of yellow pine for beams, a 4 cts. per ft., $54 88; 2,350 ft. deck plank, a 4½ cts., $105 75; 28 5½ inch hackmatack knees, a $3 each, $84; two five-inch oak knees, $3 50 each, $7; one 8-inch oak knee, a $9; oakum for caulking deck, $25; pitch for paying the deck, $5; iron fastenings of
103 various kinds, $75; removing joiner work, $25; labor, $300; total, $760 63.
Q. Would it require 222 days of labor to put on the repairs, as stated by you in your last answer?
A. No, sir.
Q. In case of a collision where the beams are broke off outside the hull, what would be the proper manner of repairing the beams?
A. To put another one in alongside of it, running in about 8 or 9 feet.
Q. Was it necessary, to make the repairs in that way, to take off any, and, if any, what, part of the deck plank?
A. Not *any* over the hull of the boat.
Q. In making your estimate, did you make any, and, if any, what, examination of the boat?

A. Not any.
Q. Did you make any, and, if any, what measurement?
A. The measurement of all the materials I have given you.
Q. How did you arrive at the information what materials were necessary for your estimate?
A. Through Mr. Clough.

104 Q. Were you on board the Hector, and did you make any measurement of her deck, or otherwise?
A. I did, sir.
Q. What was that measurement and examination?
A. The size of all the different materials, beams, deck plank, facings, linings, plank shears.
Q. Do you recollect the size of her deck forward of her water-whel?
A. I do.
Q. Will you give that measurement?
A. 66 feet long, about 35 or 36 feet beam.
Q. If the repairs had been made as spoken of in your answer by putting in beams alongside, what would then have been the expense on the starboard guard?
(Obj'd to, overruled, and exception.)
A. About $150.
Q. What would be the effect of a fore and aft collision on the starboard guard as to the rest of the vessel other than the guard?
(Obj'd to, sustained, and exception.)

105 *Cross-examined.*

When did you take the measurement you spoke of?
A. If my memory serves me right, it was in May last.
Q. Who told you what to measure?
A. Mr. Clough.
Q. Did you go around the boiler inside?
A. I did not.
Q. How many beams did you allow for in your estimate?
A. Twenty-one.
Q. If a deck beam on a ship be broken, how would you repair it?
(Obj' to, sustained, and exception.)

HERBERT LAWRENCE, JR.

Subscribed and sworn to before me this 15th day of Sept., 1859.
KENNETH G. WHITE,
U. S. Com'r.

Peter C. Ruck, sworn for claimant:
Q. What is your business?
A. Shipwright.
Q. How long have you been engaged in business?
A. Twenty-eight years.
Q. Do you know the steamboat Hector?

106 A. Yes, sir.

Q. Has any part of your business been the repairing of steamboats?

A. Yes, sir.

Q. Have you made an estimate of the expense of putting on a deck and other fixtures forward of the wheel-beam of the steamboat Hector?

A. Yes, sir.

Q. Will you give the particulars of that estimate?

A. Four thousand ft. of deck plank, at 5 cents a foot, $20; oakum, pitch, and labor, $35; spikes, $18. That is all. In all, $253.

Q. Are there any other items? If so, state in your estimate.

A. 30 knees, at $3 each, $90; 14 short beams, 12 ft. long, 5 × 6, 504 feet, 5 cts. a foot, $25 20; 7 beams, 25 ft. long, 8 × 6, 840 ft., at 5 cents, $42; 300 ft. of oak plank for plank shears, facings, and linings, at 5 c., $15; 150 feet of oak for guard braces, at 5 c., $7 50; cartages on material, $15; 95 days' work, at 21s. per day, $249 37. Total, $754 17.

107 Q. Did you make any examination or measurement of the steamboat Hector before making this estimate?

A. Yes, sir.

Q. What was that measurement and examination?

A. I run over the deck, guards, beams, and knees; nothing else. I made a diagram of it—of a half of her.

Q. What was the length of her deck?

A. Sixty-six feet.

Q. From where?

A. From the wheel-beam forward to the stern.

Q. What is her width of beam?

A. Twenty-five feet front of the boiler, and about 35 at the wheel beam.

Q. What would be the proper manner of repairing the Hector after a collision in which her beams were broken outside the hull?

A. Run false beams in about 8 or 10 feet inside of her hull.

Q. Would it be necessary to take up her deck plank to make the repairs in that way?

A. No, sir, unless the plank sheer was broke or deck plank started.

108 Q. If the Hector had been repaired in that way, what would have been the expense?

A. I could have furnished beams, knees, oak for plank shear on guard, wearing pieces, linings, and facings, knees and braces, for the sum of $200, all completed.

Q. What would have been the labor, and is it included in your estimate?

A. It is included in the estimate. It would be $75.

Q. Have you allowed in your first estimate for joiner work?

A. No, sir. I didn't see that it needed any done.

Q. In your examination would you see where repairs had been done upon the Hector?

A. Yes, sir.

Cross-ex'd.

Q. When did you make your examination?
A. Some time in the month of May last.
Q. Do you know what injuries were repaired by Mr. McGinness in Sept., 1854, of your own knowledge?
A. I do not.
Q. What is principal business?
A. Shipwright, caulking, and spar-making.
109 Q. Did you go around the boiler in this case?
A. Not sir; from the boiler forward.

PETER C. RUCK.

KENNETH G. WHITE, *U. S. Com'r.*

Subscribed and sworn to before me this 15 day of Sept., 1859.

Adjourned to the 17th inst., at 10 a. m.

SEPT. 17th.

Present: Proctors for respective parties.
Luther Adams, sworn for claimant.

Q. Where do you reside and what is your business?
A. New York. Towing business.
Q. How long have you been engaged in that business, and were you engaged in that business in August and September, 1854?
A. Been engaged in the business seven years, and was in the business at the time referred to.
Q. Do you know the steamboat Hector?
A. Yes, sir.
110 Q. In August and Sept., 1854, did you then know her?
A. Yes, sir.
Q. What would she have been worth per day in August and September, 1854, to charter?
A. I think from $65 to $70 a day.
Q. What would have been her expenses, for manning, victualing, and fuel, per day during that time?
A. $45.
Q. What would have been the expense of her fuel per day during that time?
A. $30.
Q. In what business was the Hector engaged at that time?
A. Towing business.
Q. Were you in the same business at that time, and in what boat?
A. I was, and had the steamboat Pilot.
Q. How was the towing business in August and to the 15 of Sept., 1854?
A. There was a fair business, nothing extra?
Q. What was the character of the Hector as a steam-tug as
111 to speed and otherwise?
A. As to speed she was rather slow, as to towing she was a fair tow-boat.

Q. What was the value of the Hector in August and September, 1854, in your judgment?

A. As near as I could judge she was worth about $12,000.

Cross-ex'd.

Q. Have you owned any other boat than the Pilot?

A. Yes, sir.

Q. What?

A. Island Belle, portion of the steamboat Ceres.

Q. Do you know the tonnage of the Hector?

A. I do not.

Q. Do you know the power of her engine?

A. I know pretty near the size of it, but don't know the horse-power.

Q. Did you have any occasion to charter tow-boats in August and September, 1854?

A. I did, but not by the day.

Q. How do the Pilot, Island Belle, and Ceres compare with the Hector as to size and power?

112 A. They are all smaller, but the towing capacity of the Ceres is $\frac{2}{3}$ of that of the Hector.

Q. Do you know how many tons of coal the Hector uses a day?

A. I suppose she would use about six tons.

Q. Do you know?

A. No, sir.

Q. When did you own the Ceres?

A. The 1st Dec., 1857.

Q. Was she a new boat then?

A. Yes, sir.

Q. What was the size of the Pilot?

A. Don't recollect her tonnage exactly; 120 tons or thereabouts; couldn't tell her horse-power.

Q. What was the size of her engine?

A. Thirty-inch cylinder and four feet stroke.

Q. What was she worth?

A. I suppose she was worth $1,000.

LUTHER C. ADAMS.

Subscribed, sworn to before me this 17th day of Sept., 1859.

KENNETH G. WHITE, *U. S. Com'r.*

William Dickey, sworn on part of claimant.

Q. What is your business?

113 A. Ship carpenter.

Q. How long have you been engaged in that business?

A. Over twenty years.

Q. Do you know the steamboat Hector?

A. I have seen her.

Q. Have you examined her deck and hull, and made any measurements? and if so, state.

A. Yes, sir; I measured her length and breadth from her wheel beam to her stern.

Q. Did you make an estimate of the expense of putting on a new deck forward of the wheel-beam, including beams, knees, and other fixtures on the steamboat Hector? If so, state the estimate in detail.

A. Yes, sir; I estimated for putting a new deck, deck frame, guards, and all appertaining to the forward part of the deck, replacing the knees on one side, and putting new knees on the other side, at an expense of $856 54. I produce a statement of the details, which is marked "Claimant's Exhibit A. N. G. W., U. S. court."

114 Q. In the case of a collision where the beams are broke off outside of the hull, what would be the proper manner of repairing the beams?

A. They are generally run in and spliced.

Q. To make the repairs where the guard has been taken off by a collision outside the hull, would or would it not be necessary to put on a new deck, or any part of it inside the guards?

A. I should'nt think it would.

Q. What would have been the expense of putting on a new guard on the Hector where the beams had been broken off by a collision?

A. I have estimated it $375, making all the beams new in the space of the boiler, and splicing those forward of the boiler on one side.

Q. Would it be necessary to have 222 days' labor to put the whole deck, beams, knees, and fixtures forward of the water-wheels on the Hector?

A. No, sir.

Cross-ex'd.

Q. When did you see the Hector?

115 A. I saw her last May, the last I saw her.

Q. Was it then you made these measurements and estimates?

A. I made the measurements at that time, and went home with them, and made the estimate probably in two weeks; can't say the exact time.

Q. Were you alone when you made the measurements?

A. No, sir.

Q. Who was with you?

A. Mr. Clough.

Q. How did you know what estimates and measurements to make?

A. Mr. Clough pointed out to me where the damage was, and I went below decks, and examined and saw what was new and what was old.

Q. What do you mean by new?

A. I mean where the new timber or beams were put in; I mean that that was put in last.

Q. Did you ever work on the Hector?

A. No, sir.

Q. Did you ever examine her previous to August, 1854?

A. Never examined her; no, sir.

116 Q. Do you know whether she is built forward of the wheel beam now as she was before Aug., 1854?

A. No, sir.

Q. Does not the cost of repairs to a vessel depend, in part, upon the way in which she is built?

A. Yes, sir; it certainly does.

WILLIAM DICKEY.

Subscribed and sworn to before me this 17th day of Sept., 1859.

KENNETH G. WHITE.

William G. Lockwood, sworn for cl'm't:

Q. Where do you reside, and what is your business?

A. Reside in Brooklyn; towing business.

Q. How long have you been engaged in that business?

A. About fifteen years.

Q. Do you know the steamboat Hector?

A. I do.

Q. Did you know her in Aug. and Sept., 1854?

117 A. Yes, sir.

Q. What would she have been worth per day in Aug. and Sept., 1854, to charter?

A. From $65 to $70, I should think.

Q. Would that have been her gross earnings?

A. I should think that would be a fair remuneration for a day's work at that time.

Q. What were her expenses for manning, victualing, and fuel per day during that time?

A. To the best of my knowledge, $45 would pay the running expenses.

Q. What were her expenses per day for fuel during that time?

A. I should say about $30.

Q. In what business was the Hector engaged at that time?

A. Towing business.

Q. Were you engaged in the same business?

A. I think I was; there was a portion of the 15 years I have mentioned that I was not in the towing business.

Q. What was the value of the Hector in August and Sept., 1854?

A. To the best of my knowledge, $12,000.

118 *Cross-ex'd.*

Q. What tugs have you owned?

A. None; been acting as agent.

Q. Did you ever buy a tug?

A. No, sir.

Q. Did you ever sell one?

A. No, sir.

Q. Do you know the size of the Hector?

A. I can't say as to tonnage; to the best of my knowledge the engine about 38 inch cylinder, 8 to 9 feet stroke.

Q. What is your knowledge founded on?

A. Long acquaintance with steamboats, and her in particular, having known her under two or three different names for some time.

Q. Have you ever been aboard of her?

A. I have.

Q. How often?

A. Can't say positively; a number of times; I used to be engaged in working for her.

Q. In what capacity?

A. I was hired by Mr. Martin to attend to out-door business
119 and running around and collecting work for her.

Q. Did you charter any tug-boat by the day during Aug. and September, 1854?

A. Not to my knowledge, by the day.

Q. Is not your estimate of $65 to $70 a day founded upon an estimate of her earnings?

A. No, sir.

Q. What then?

A. Founded upon what I suppose boats of that capacity were worth per day.

WILLIAM G. LOCKWOOD.

Subscribed and sworn to before me this 17th day of Sept., 1859.

KENNETH G. WHITE, *U. S. Com'r.*

Alexander H. Shultz, sworn for clm't.

Q. What is your business, and how long have you been in that business?

A. I am steamboat proprietor, and have been in the steamboat business for 32 years.

Q. Do you know the steamboat Hector, and have you owned
120 her, and if so, when?

A. I never owned her, but was a party to her purchase from the government with Wm. R. McCullough; think his name was Wm. R.; she was purchased in his name for $5,000, at auction; I think it was in 1844 or 1845; I am not certain.

Q. Were you on board of her at that or any other time, and do you know her tonnage and capacity?

A. I was on board of her, and examined her before her sale and afterwards; I do not know her tonnage and capacity.

Q. *I was on board of her, and examined her before her sale and afterwards; I do not know her tonnage;* I can't answer the question as to her engine; her cylinder was not less than 36-inch and not over 40-inch.

Q. Do you know her age?

A. I believe she was built at the time of the New Brighton speculation, in 1834 or 1835, and called the New Brighton.

121 Q. Was she then known, or at any time since, as an ocean sea-going steamer?

A. She was sold to the government, and called the Poinsett. She went south to the Florida coast, and from thence to New Orleans. Of course she had to go to sea, and was successful in going and coming.

Q. Was any portion of her guards taken off when purchased by the government?

A. She had sponsools put on her, but whether her guards were reduced or not I don't know, but I think they were; I have no means of knowing.

Q. Did you know her in Aug. and Sept., 1854?

A. No, sir.

Q. Had you not seen her in the harbor at that time?

A. I may or may not.

Q. What would she have been worth in Aug. and Sept., 1854, per day to charter?

A. I had no boats engaged in towing in 1854.

Q. What was her value, in your judgment, in Aug. and Sept., 1854?

122 (Obj. to, objection sustained, and exception.)

Cross-ex'd.

Q. How long did McCullough own her?

A. I can't answer that.

Q. When did you sell out your interest?

A. Perhaps within sixty days after the purchase, I am not certain as to the time, to Mr. McCullough.

Q. For what price did you sell?

A. I was to have one-half of her profits after the purchase. I was to own one-half of her. I sold out for $500 my half. He gave me $500 profit.

A. H. SHULTZ.

Subscribed and sworn to before me this 17 day of Sept., 1859.

KENNETH G. WHITE, *U. S. Com'r.*

Hiram Wheeler, sworn on part of claimant:

Q. What is your business?

A. Steamboating.

Q. Where?

123 A. Around the harbor, outside occasionally, up the North river, Raritan river, sometimes at Newark, wherever we had jobs in towing.

Q. How long have you been engaged in the towing business?

A. About 15 or 16 years.

Q. Was you engaged in the towing business in Aug. and Sept., 1854?

A. No, sir.

Q. Where were you then?

A. I was running from Albany down east with a sloop.

Q. Did you know the steamboat Hector in Aug. and Sept., 1854?
A. I see her, sir.

HIRAM WHEELER.

Subscribed and sworn to before me this 17 day of Sept., 1854.
KENNETH G. WHITE, *U. S. Com'r.*

Reuben Coffin, sworn for claimant:

Q. What is your present business?
A. I am one of the harbor masters of the port of New York.
124 Q. Have you been engaged in the towing business; and if so, from what time, and up to what time?
A. I have from the year 1853 up to the present time.
Q. Do you know the steamboat Hector, and how long have you known her?
A. I know the steamboat Hector, and have known her from 1853.
Q. What would she have been worth per day in Aug. and Sept., 1854, to charter?
(Obj'd to, overuled, and exception.)
A. From $50 to $60.
Q. What would have been her expenses for manning, victualling, and fuel per day during that time?
A. From $40 to $45 per day.
Q. What would have been the expense of her fuel during that time?
A. I should think about $30.
Q. In what business was the Hector engaged at that time?
A. She was towing to sea and from sea.
Q. Were you engaged in the same business?
125 A. I was.
Q. Do you know the value of the Hector in Aug. and Sept., 1854? if so, state.
A. My answer to that question would be from seeing the boat around the harbor, and I should judge somewhere about $12,000.
Q. Do you remember the collision between the Mabey and the Hector at the time that it occurred?
A. I remember hearing about the collision at that time.
Q. Do you know if, after the collision, the Hector continued towing without laying up; and if so, for what time?
A. I have no knowledge of the fact at all.

Cross-ex'd.

Q. You say you have been engaged in the towing business; in what capacity?
A. As captain and pilot.
Q. Did you ever buy a tug?
A. No, sir.
Q. Did you ever sell one?
A. No, sir; I have sold interests.
Q. Did you sell any during the summer of 1854?

126 A. I did.

Q. What?

A. Three-eighths of the steamboat John Birkbeck.

Q. For how much?

A. At the rate of $11,400 or $11,600.

Q. What is her size compared with the Hector?

A. Smaller boat; she is 95 feet keel, 21½ feet beam; her tonnage 117; size engine, 26-inch cylinder, 6 ft. stroke.

Q. Did you in Aug. and Sept., 1854, charter any tug by the day?

A. It is so long ago; I presume I did though.

Q. Did the Birkbeck tow out to sea when you had the interest you sold?

A. Yes, sir.

Q. Regularly, or occasionally?

A. Whenever we got a job to do so.

Q. Do you know how many the Hector employed at that time, all told?

A. No, sir; I do not know how many.

127 Q. Do you know how much coal she burned a day?

A. I judge from our boats that I am interested in.

Q. You don't know otherwise?

A. No, sir.

Q. Do you make your estimate of $50 to $60 a day from the earnings of the boats in which you are interested?

A. I do.

Redirect.

Q. Have you built, or been interested in building, steam-tugs?

A. I have in building.

Q. Of how many since 1853 have you been the whole or part proprietor?

A. Four.

Q. Were your steam-tugs in August and September, 1854, doing as much or more business than the Hector?

A. In that year the outside towing was poor, and inside towing was very good, there being a great deal of emigrant work. I should think four boats were earning as much a month as the steamboat Hector.

Recross.

128 Q. Do you know how much the Hector earned?

A. I do not.

Q. Your boats were then engaged mainly in inside towing?

A. They were.

Q. What tug were you interested in in Aug. and Sept., 1854?

A. The George Birkbeck, jr., and John Birkbeck. These boats are about the same size.

REUBEN COFFIN.

Subscribed and sworn to before me this 17th day of Sept., 1859.

KENNETH G. WHITE,
U. S. Com'r.

Adjourned to the 27th inst. at 10 a. m.

SEPT. 27TH.

Present: The proctors for the resective parties.

Humphrey H. Crary, sworn for claimants:

Q. What is your business, and where do you reside?

A. Steamboat business, and reside in New York.

129 Q. Do you know the steamboat Hector, and how long have you known her?

A. I do, and have known her 7 or 8 years.

Q. What was her value in 1854?

(Obj'd to, objection sustained, and exception taken.)

Q. What would the Hector have been worth per day in Aug. and Sept., 1854, to charter?

(Obj'd to, because both sides have been limited by the com'r to 5 witnesses, and the respondents have already sworn six as to this point. Objection sustained.)

HUMPHREY H. CRARY.

Subscribed and sworn to before me this 27 day of Sept., 1859.

KENNETH G. WHITE,
U. S. Com'r.

William H. Story, sworn on part of libellant:

Q. What is your age, and what has been your business
130 during the last fifty years?

A. I am 62; mariner by profession.

Q. Have you ever been port warden of this port?

A. I have been master warden of this port for 8 years.

Q. What is your present employment?

A. I am engaged to examine damaged vessels that arrive at the port of New York, having claims against the board of underwriters of New York.

Q. Have you any experience as to the proper method of repairing damages to vessels; if so, what?

(Obj'd to, overruled, and exception.)

A. I have repaired vessels that belonged to myself, and am repairing vessels every day having claims on the underwriters.

Q. State what is the proper way to repair a steamboat where her beams have been broken off by a collision.

(Obj'd to, overruled, and exception taken.)

131 A. Where there are smaller beams broken off close to her hull, connected with the hull, so as to injure the hull, I should replace them with new beams.

Q. Question repeated at the solicitation of proctor for libellant.

A. Same answer. I think this would be the proper way.

Cross-ex'd.

Q. Did you see the Hector at any time after her collision with the Mabey, to know how she had been injured?

A. No, sir; not to examine her.

Q. What would be a proper way to repair a steamboat injured

by a collision where her beams were broken off outside the hull, the guard plank injured, and no other part of her main hull affected; could it not be well done by splicing the beams?

(Obj'd to.)

A. I should object to splicing the beams.

W. H. STORY.

Subscribed and sworn to before me this 27 day of Sept., 1859.

KENNETH G. WHITE,
U. S. Com'r.

132 Thomas Collyer, sworn for lib'l'nt:

Q. What is your business?

A. Ship building, steamboats, &c.

Q. To what extent?

A. Am largely engaged in building steamboats?

Q. Have you any experience in repairing steamboats; if so, to what extent?

A. I have repaired steamboats in most all shapes.

Q. State what is the proper method to repair a large tow-boat like the Hector's beams, where they had been broken off by a collision.

(Obj'd to, overruled, and exception.)

A. I think I have sufficient experience, if I was told how the beams were broken, to give a very accurate opinion as to the proper manner to repair them.

Q. Suppose, in breaking off the beams, the deck was torn up and started, knees on the starboard, outside and inside, were injured, some broken, the beams broke off just inside the clamp streak, between the waist streak and the clamp streak, how would you repair the beams?

133 A. Take them out and replace them by new ones.

Q. State whether or not it is possible for any person, by examining a tow-boat a considerable time after her beams and deck had been repaired, and old guards taken off and replaced, to form an accurate estimate of the expense of the repairs.

(Obj'd to, overruled, and exception.)

A. He could not.

Cross-ex'd.

Q. Do you ever relay old deck plank?

A. I never have.

Q. Have you ever repaired beams of a steamboat by splicing?

(Obj. to, overruled, and exception.)

A. In some cases I have.

Q. In what cases?

A. Where the beams project over the hull from 5 to 7 feet, and have from one to two feet broken off the end of one or two beams.

Q. Do you know the Hector?

A. I have seen her.

Q. Where is she lying now?

134 A. I do not know.

Q. Are you or any other person building a new hull for her engine?

A. As to my knowledge, I am building a vessel for her engine.

THOS. COLLYER.

Subscribed and sworn to before me this 27th day of Sept., 1859.

KENNETH G. WHITE,
U. S. Com'r.

William H. Merry, sworn for libellant:

Q. What is your business?

A. Surveyor for the French.

Q. State what would be the proper method of repairing the beams of a tow-boat where they had been carried away by a collision?

(Obj'd to, overruled, and exception.)

A. By taking them out and replacing them with new.

Q. State whether or no, where the beams of a steamboat had been broken off in the stringers and clamps, you would consider
135 her sea-worthy if, instead of taking out the beams, they were spliced.

(Obj'd to, overruled, and exception.)

A. I should not.

Cross-ex'd.

Q. Have you ever examined the Hector after her collision with the Mabey?

A. No, sir.

WM. H. MERRY.

Subscribed and sworn to before me this 27th day of Sept., 1859.

KENNETH G. WHITE,
U. S. Com'r.

Raymond Kelly, sworn for libellant:

Q. What was your business in January, 1854?

A. I was pilot on the Hector.

Q. Do you recollect a collision between the Hector and the Marion, in January, 1854?

A. I do.

Q. Do you recollect a collision between the Hector and the Mabey, in August, 1854?

A. I recollect by hearsay; I didn't see it.

136 Q. State whether or not the damages sustained by the Hector in the collision with the Marion were fully repaired before the collision with the Mabey.

(Obj'd to, overruled, and exception.)

A. I think she was properly repaired.

Cross-ex'd.

Q. Did she receive, in the collision with the Marion, any injury to her beams, knees, or hull?

A. Her bow was split, some of her forward beams were broke, and her deck tore up, and some of her knees broke.

Q. How far back from her stern were beams broke?

A. There were two or three beams put in, I think; I should think about 10 feet back from her stern.

Q. What do you mean by saying she was split open?

A. I don't know any other way to express myself than to say she was split open; the top of her stem was broke off.

RAYMOND KELLY.

137 Subscribed and sworn to before me this 27th Sept., 1859.

KENNETT G. WHITE,
U. S. Com'r.

Adjourned to Oct. 3d, at 11 a. m.
Oct. 3.—Att'd and adj. to the 4th, at 11 a. m.
Oct. 4.—Attended and case submitted.

Endorsed: U. S. circuit court. Russell Sturgis *vs.* The Steamboat R. L. Mabey. Commissioner's evidence.
Filed 12th Sept., 1860.

138 [Collision R. L. Mabey.]

NEW YORK, *Sept.* 21, 1854.

Steamer Hector and owners to McGinness & Co., shipwrights and caulkers, all kinds of spars made to order, yard 243 *South st., near Pike, Dr.*

Aug. 29.	To 4,227 ft. of wh. pine deck plank, *a* 5 c	$211 45
	" 1,577 " " yl. pine beams, &c., 5 c	78 85
	" 7 dog oak wedges, 5 c	4 20
	398 ft. oak, 6	23 46
	28 5-in. hack knees, $3	84 00
	2 5 " oak do. $3 25	6 50
	1 8 " " "	11 00
	98 ft. of yl. pine, 5 c	4 90
	291 lb. of spikes, 8 c	23 28
	143 " " oakum, 11½	16 44½
	707 ft. " elm, 5 c	35 35
	542 " " ct. oak, 6	32 52
	2 bbls. pitch, 26*s*	6 50
	2 pitch mops, 6*s*	1 50
	3 float stages, 11 day each, 4*s*	16 50

Cartages	$12 00
Carpenters' and caulkers' time, 222 days, 25*s* 6*d*	707 62½
2 boys, 12 days each, 12*s*	36 00
	$1,312 08

Rec'd paym't.

McGINNESS & CO.

[Duplicate.]
Exhibit No. 1.—K. G.W., *U. S. Com'r.*

139 [Caused by disaster.—Col. R. L. Mabey.]

NEW YORK, *Sept.* 20, 1854.

Steamer Hector and owners to John H. Elliot, Dr.

To 109 lbs. mixed zinc white, *a* 10	$10 90
39½ " " black, *a* 8	3 16
4½ " " lead color, *a* 10	45
5½ " " stone color, *a* 8	44
10 " putty, *a* 5	50
13½ gall's oil, *a* 8*s*	13 50
1½ " turp., *a* 6*s*	1 13
12½ days' work, *a* 18*s*	28 69
	$58 77

Rec'd paym't.

JOHN H. ELLIOTT.
p. J. WEED.

Exhibit No. 2.—K. G. W., *U. S. Com'r.*

140 [Damage acc't.]

NEW YORK, *Aug.* 26, 1854.

Steam-tug Hector and owners to Daniel Coger, Dr.

To 78 1¼-in. plank, *a* 3*s*; 51 nails, *a* 7 c	32 82
" 4 cartage, *a* 3*s*; 96 feet pine, *a* 4½ c	5 82
" 8 1¼ plank, *a* 2*s* 6*d*; 4 doz. screws, *a* 2*s*	3 50
" 35½ days' work, *a* 21*s*; 1 doz. screws, *a* 2*s* 6*d*	93 49
	$135 63

Rec'd paym't.

DANIEL COGER.

Exhibit No. 3.—K. G. W., *U. S. Com'r.*

141 NEW YORK, *Sept.* 4, 1854.

Ship and steam-boat blacksmith work, in all its branches. Anchors and chains for sale. Ship chandlery ware supplied.

Steamboat Hector and owners to Stephen Roberts, Dr., shipwright, No. 368 *South st., near Gouverneur slip.*

By damage:

73½ lbs. of bolts, at 8c. a lb	$5 84
122 lbs. of bolts, bar iron, 6c. per lb	7 32
91 lbs. of spike, second hand, 5c. per lb	4 55
226 lbs. of screw bolts and plates, 10c. per lb	22 60
25 lbs. of blunt bolts, 8c. per lb.; weld'g aug's, 2s	2 25
5½ lbs. plates, 10c. per lb.; rep. 2 deck starts, 6s	1 30
Making 47 lbs. of screw bolts of old iron, 8c. per lb	3 76
63 rings, 2c. each; 4 lbs, do. do. 10c. per lb	1 66
Repairing 4 cold chisels, 4s.; rep. 6 slice pins, 12s	2 00
20 lbs. of new 8-inch spikes, 8c. per lb	1 60
Repairing and recutting 22¾ bolts, 1s. ea	2 75
Cutting and pointing 4 bolts, 2s.; 30 lbs. old spikes, 5c. per lb.	1 75
50 lb. of new 5-inch spikes, 8c. per lb.; 29 lbs. of bolts, 6c. per lb	5 74
26 rings, 4s.; 8 lbs. plates, 10c. per lb.; 2⅜ staples, 1s	1 42
15½ lbs. plates to horser pipe, 10c. per lb.; 32 nails, 3c. per lb.	2 51
16 lbs. bolts, 8c. per lb.; welding 2 augurs, 2s.; rep. 4 bolts, 4s.	2 03
Labor, nailing an old plate to bars, 4s.; 45 nails, 1c. ea	0 95
10 lbs. of chains, 8s.; 14 lbs. of plates, 10c. per lb.; 6 lbs. draw bolts, 10c. per lb	3 00
8½ lbs. braces, 10c. per lb.; 12 long nails, 2s.; 6 new large nuts, 6s.	1 85
Making 12 long screw bolts of old iron heads and screws, 3s. each	4 50
6½ bolts, 10c. per lb.; 24 lbs. slice bars, 8c. per lb	2 57
2 iron wedges, 8s.; 2 cold chisels, 4s,; 2 start hammers, 6s	2 00
60 lbs. of screw bolts, at 10c. per lb	6 00
50 lbs. of ⅝ blunt bolts, 8c. per lb	4 00
Whole bill of work by damage	$94 05

142 Received payment.

STEPHEN ROBERTS.

Exhibit No. 4.—K. G. W., *U. S. Com'r.*

143 NEW YORK, *Oct.* 10, 1854.

Steam-tug Hector and owners to the marine surveyors, 115 *Wall st., Dr.*

To surveys and certificates of hull $7 50

Rec'd pay't for the marine surveys.

J. D. HAYES.

Exhibit No. 5.—K. G. W., *U. S. Com'r.*

Circuit court of the United States for the southern dist. of New York.

RUSSELL STURGIS
vs.
THE STEAMBOAT K. L. MABEY, her tackle, &c. } Commissioner's report.

In pursuance of a decretal order, made in the above-entitled cause on the 25th day of April, in the year of our Lord one thousand eight hundred and fifty-nine, by which, among other things, it was referred to the undersigned, one of the commissioners of this court, to ascertain and compute the amount due the libellant for damages, and to report thereon to this court with all convenient speed, I. Kenneth G. White, the commissioner to whom the matter was referred, do report: That I have been attended by the proctor for the libellant and by the proctor for the claimant, and have taken and ex-
145 amined the testimony offered in support of the libellant's claim, do find that there is due to the libellant the sum of three thousand two hundred and sixty-two $\frac{30}{100}$ dollars.

Dated the 19th day of Oct., A. D. 1859. All which is respectfully submitted.

KENNETH G. WHITE,
U. S. Commissioner.

146 Circuit court of the United States.

RUSSELL STURGIS
vs.
THE STEAMBOAT R. L. MABEY, her tackle, &c. }

The claimant in this action except to the report of Kenneth G. White, a commissioner of this court, made under an order of this court, entered April 25, 1859.

First. Because he reports due to the libellant the sum of $3.262 $\frac{30}{100}$.

Second. Because he has allowed, as claimed by the libellant, the sum of $1,603 $\frac{02}{100}$ to the libellant for the repairs of the steamboat Hector, with interest.

Third. Because he has allowed, as claimed by the libellant, the sum of $10 50 for the demurrage and detention of the steamboat Hector, with interest.

146 Fourth. That it does not appear from the report of the said commissioner what items or particular claims have been allowed or disallowed by the commissioner.

Fifth. The claimants renew the different exceptions taken to the ruling of the commissioner, as to objections made by the claimants to interrogatories propounded by proctor for libellant, and also as to those propounded by proctor for claimant.

JOHN VAN VLECK, *Proctor for Claimant.*

October 20, 1859.

Endorsed: Circuit court of the United States. Russell Sturgis *vs.*

The steamboat R. L. Mabey, her tackle, &c. Exceptions to the commissioner's report.

JOHN VAN VLECK,
Proctor for Clm't, 39 Wall st.

Filed Oct. 20, 1859.

148 U. S. circuit court.

RUSSEL STURGIS
vs.
THE S. B. R. L. MABEY, &c. } Affidavit of service.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Wm. W. Goodrich, of the city of New York, being duly sworn, doth depose and say that he did, on the 21 day of Sept., in the year one thousand eight hundred and sixty, serve Jno. Van Vleck, esq., claimant's proctor in the above-entitled action, with a copy of the annexed aff't and notice of motion, by delivering the same to a young man in said proctor's office.

WM. W. GOODRICH.

Sworn to before me this 22d day of Sept., 1860.
WM. D. JONES, *Notary Public.*

U. S. circuit court.

RUSSEL STURGIS
vs.
THE S. B. R. L. MABEY, &c.

Upon the pleading and proceedings herein, and upon the commissioner's report and the affidavits hereto annexed, we shall move this honorable court, on Monday, the 24th Sept., inst., at the opening of the court, or as soon thereafter as counsel can be heard, that the order, of which a copy is annexed, be entered herein, or otherwise, that the cause be reheard upon the exceptions heretofore filed to the commissioner's report, or for such other or further order as to the court shall seem meet.

149

Sept. 21st, '60.

Yours, &c.

BENEDICT, BURR & BENEDICT,
Lib'l't's Proctors.

TO JNO. VAN VLECK, ESQ., *Claim't's Proctor.*

U. S. circuit court.

RUSSEL STURGIS
vs.
THE S. B. R. L. MABEY.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Charles L. Benedict, of said district, one of the proctors for the libellant, being duly sworn, says that he had charge of the reference

herein to ascertain the amount of damages. That upon such reference it was proved that the vessel was detained fourteen days while undergoing the repairs made necessary by the collision. That upon such reference the amount of demurrage to which the libellant was entitled was shown by proving the amount which the vessel would earn the libellant on hire or charter during the time of her detention, deponent intending by the proofs to conform to the rule laid down by the Supreme Court of the United States in the case of Williamson against Barrett, (13 Howard, page 110,) in the following language:

"If, however, we look to the demand in the market for ves-
150 sels of the description that has been disabled, and to the price there which the owner could have obtained or might have obtained for her hire, as the measure of compensation, all uncertainty disappears. * * * * The market price, therefore, of the hire of the vessel applies as a test of the value of the service will be, if not as certain as in a case where she is under a charter-party, at least so certain that, for all practicable purpose in the administration of justice, no substantial distinction can be made." And the following questions and answers are literal extracts from the testimony given before the commissioner, as well on the part of the claimants as on the part of the libellant, here brought together briefly for more convenient reference:

For libellant.

To Joseph T. Martin:

Q. State whether or not there was or was not in the latter part of August or first part of September, 1854, a demand for the services of such boats as the Hector in this port?

A. There was.

Q. State whether or not the Hector was in constant employment at that time.

A. She was pretty busy at that time.

Q. What would she have been worth per day in the fall of 1854 to charter? Obj. to.

A. If I wanted to charter a boat of the kind I should have been willing to give $100 per day.

151 Emerald T. Wilson:

Q. How was the demand for the service of such a boat in August and September, 1854?

A. The demand was very good.

Q. What was the value of that in this harbor at that time for, say fourteen days?

A. It is my opinion that she could readily command $100 per day to charter for fourteen days.

Jeptha B. Parks:

Q. How was the demand in August and September, 1854, in this harbor for the services of such a boat as the Hector?

A. Outside towing at that time was very good ; that was her business.

Q. What was the value of that boat in August and Sept., 1854, in this harbor per day, manned and furnished for her ordinary business?

A. I suppose she would do a business of $2,500 per month.

Q. How many days do you count for a month ?

A. About twenty-six running days in a month.

Q. What was the value of that boat for fourteen days in her ordinary business at that time in this port?

A. I think she could have been chartered for $100 a day.

152 Solomon Thomas:

Q. How was the demand in this port for the services of such a vessel in the months of August and Sept., 1854 ?

A. The demand was good.

Q. What was the value of that tug at that time per day, when manned and furnished for her ordinary business ?

A. From $95 to $100 per day.

Charles Hazzard:

Q. How was the demand in this port for the services of such a vessel in the months of Aug. and Sept., 1854 ?

A. It was very good.

Q. What would the steamer Hector have been worth per day at that time to charter for, say, fourteen days?

A. I should consider $100 a day fair. I should consider that a fair charter. She would be worth that.

Q. What would the steam-tug Hector have earned in fourteen days, during the months of August and September, in this port, in the ordinary business in which she was engaged, manned and equipped?

A. I suppose she ought have made $1,500 and upwards in fourteen days.

153 *For defence.*

David Lampman:

Q. What was a fair sum per day for the charter of the Hector in August and September, 1854, exclusive of the expenses?

A. From $25 to $30, exclusive of her expenses.

Luther Adams:

Q. What would she have been worth per day in August and September, 1854, to charter ?

A. I think from $65 to $70 per day.

Wm. G. Lockwood:

Q. What would she have been worth per day in August and Sept., 1854, to charter ?

A. From $65 to $70, I should think.

Reuben Coffin:

Q. What would she have been worth per day in August and Sept., 1854, to charter ?

A. From $50 to $60.

Deponent further says that part of the above evidence was offered by the claimants themselves as coming within the rule laid down by the Supreme Court in the case of Williamson *vs.* Barrett, and the claimants themselves never contended, as deponent understood, that no demurrage was proved, but, on the other hand, upon their points conceded that several hundred dollars should have been allowed for demurrage, whereas the court has stricken out the whole allow-
154 ance for demurrage, leaving no damages whatever to the libellant for detention of fourteen days; that it is impossible to determine, from the report of the clerk or from the testimony, how much was actually allowed for the demurrage; that the exceptions filed by the defendant state that the amount allowed for demurrage was one thousand and fifty dollars.

Deponent further says that, as he understands, no computation based upon the proofs shows $1,099 50, as allowed for demurrage and calculation, will show that that was not the sum allowed for demurrage, as deponent understands and believes, and it is not possible, without a further hearing before the commissioner, to ascertain what sum was allowed by him for demurrage.

Deponent further says that, on such reference, the following additional questions were put and answered without objection:

Q. State the value of the Hector per day at that time, with her crew and officers.

A. I should say from $100 to $120 per day.

Q. What was the value of that boat at that time, with crew and provisions and coal necessary for her ordinary business?

A. Her gross receipts would be in the neighborhood of $100
155 per day. Sometimes it would exceed that and sometimes fall short.

Q. What was the value of the steam-tug Hector per day, for 14 days, in August and September of that year, in her ordinary business?

A. I suppose they ought to be over $100 per day. The reason is, I considered the services of the Leviathan worth from $150 upwards.

Deponent further says that, as he is informed and believes, the business of towing is a regular and stable business, and as certain in its amount and value as that of any other class of vessels, not excepting the regular passenger and freight boats upon the river; that the detention of the vessel in this case for fourteen days was a substantial damage, and if the amount thereof has not yet been proven with certainty, it can be done without difficulty.

CHAS. L. BENEDICT.

Sworn to before me this 21st Sept., 1860.

WM. D. JONES, *Notary Public.*

156 At a circuit court of the United States for the second circuit, held at the city of New York on the 1 day of September, 1860. In admiralty. Present: Hon. Samuel Nelson, justice, &c.

RUSSEL STURGIS
ag't.
THE STEAMBOAT R. L. MABEY, her tackle, &c. } Proposed order.

This cause having been heard on exceptions to the report of the commissioner, it is now ordered, adjudged, and decreed that the first, second, fourth, and fifth exceptions taken to the said report be disallowed; and it is further ordered that the third exception taken to said report be and the same is hereby allowed, and it is hereby refered back to the commissioner to ascertain the sum to be decreed for fourteen days' detention of the steam-tug in the proceedings mentioned, while undergoing repairs, and that he report thereon with all convenient speed.

167 Endorsed: U. S. circuit court. Russell Sturgis *vs.* The S. B. R. L. Mabey, &c.

Aff't and no., and motion for 24th Sept., at 10 a. m., and aff't service.

BENEDICT, BURR & BENEDICT,
Proct. for lib't.

Filed Nov. 30th, 1860.

I have revised my decision in this case, at the request of the counsel, and the revision has but confirmed its correctness. In passing upon the question of demurrage, and in refusing the taking of further testimony in respect to it, I was influenced as to the latter result, (the refusal to take further evidence,) from a conviction that the repairs allowed were greater than justified upon the proofs. These have to be watched, as in cases of collision there is an oportunity, and not unfrequently a disposition, by the successful party to aggravate them. I should have been obliged, therefore, to have set aside the whole report; and the withholding of the reference in the demurrage satisfied me the result would be about just between the parties on the whole case.

S. NELSON.

158 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the city hall in the city of New York, on the seventeenth day of January, in the year of our Lord one thousand eight hundred and sixty-one. Present: The honorable Samued Nelson, an associate justice of the Supreme Court of the United States.

RUSSELL STURGIS
vs.
THE STEAMBOAT R. L. MABEY, her tackle, &c., JOHN CLOUGH, R. L. MABEY, HENRY M. WEED, claimants.

This cause having been, in pursuance of the mandate of the Supreme Court of the United States, referred to one of the commissioners of this court to ascertain and report to this court the amount of damages sustained by the libellant by reason of the collision in the pleadings mentioned; and such commissioner having thereafter, on the nineteenth day of October, 1859, reported such damages to this court; and thereafter the said cause coming on to be heard upon exceptions taken to said report, and counsel for the respective
159 parties having been heard, it is now ordered, adjudged, and decreed that the said report is erroneous, and that the libellant is not entitled to recover any sum whatever for the detention of the said steam-tug during the time she was undergoing said repairs; and it is further ordered that the libellant is entitled to recover herein of John Clough and Robert L. Mabey the sum of two thousand one hundred and sixty-two dollars and eighty cents, the same being the amount expended by the libellant in repairing the injuries caused by said collision, together with interest thereon from October 19, 1859, the date of the commissioner's report herein, to wit, the sum of two thousand four hundred and thirty-seven dollars and thirty cents. And it is further ordered, adjudged, and decreed that the libellant recover against the said claimants the costs of the district court in this cause, to be taxed with interest thereon from the date of the decree of the district court, amounting in all to the sum of one hundred and two $\frac{86}{100}$ dollars.

And on like motion it is ordered that the libellant recover herein against the said claimants the costs on the appeal to the court,
160 to be taxed, together with interest thereon from the 14th day of September, 1857, the date of the decree on the appeal to this court.

And on like motion it is ordered, adjudged, and decreed, that the libellant recover the sum of one hundred, twenty-five $\frac{27}{100}$ dollars, the costs awarded by the mandate of the Supreme Court in the cause, with interest from the date thereof, together with the costs of the hearing before the commissioner herein; but it is ordered that no costs be allowed on the exceptions taken to the commissioner's report.

And on like motion it is ordered that a summary judgment be entered against Robert D. Mabey, Edwin R. and John Clough, the stipulators for the amount aforesaid, to wit, two thousand nine hundred and forty-six dollars and fifty-four cents.

And on like motion it is ordered that unless an appeal be taken from the decree within the time prescribed by law, the libellant have execution herein for the amount above decreed.

S. NELSON.

161 U. S. circuit court.

RUSSELL STURGIS
vs.
THE S. B. R. L. MABEY. } Decree.

BENEDICT, BURR & BENEDICT,
Lib'l't Proctors.

Filed Jan'y 17, 1861.

162 Circuit court of the United States for the southern district of New York, in the 2d circuit.

RUSSELL STURGIS, libellant and appellant,
against
THE STEAMBOAT R. L. MABEY, her tackle, &c., JOHN CLOUGH, ROBERT L. MABEY, and HENRY M. WEED, claimants and appellees.

The appeal of Russell Sturgis, libellant and appellant, in the above entitled action, respectfully showeth, that on the thirteenth day of September, 1854, the above-named Russell Sturgis filed his libel, claiming more than two thousand dollars, in the district court of the United States for the southern district of New York, against the steamboat R. L. Mabey, her tackle, apparel, &c., for the recovery of damages sustained by him to the steam-tug Hector, her engine, &c., by collision with said steamboat R. L. Mabey, and that thereafter the said steamboat R. L. Mabey was arrested upon process
163 issued upon said libel, and was discharged upon said claimants intervening in said action and filing their answer and claim, and entering into stipulation; that afterwards the appellant duly filed his replication to said answer, and such proceedings were thereupon had that on the 17 day of December, 1856, a final decree was made by the district court, wherein it was ordered, adjudged, and decreed that the libel of the libellant and appellant be dismissed without costs to either party; that thereafter the appellant duly appealed therefrom to the circuit court of the United States for the southern district of New York, and the said cause heard anew therein, and such proceedings were thereupon had that afterwards, on the 17th of September, 1857, the said circuit court made a final decree in the said cause, whereby it was decreed that the said decree of the district court be in all things affirmed with costs; that thereafter the libellant and appellant duly appealed to the Supreme Court of the United States, and such proceedings were thereupon had that the said decree
164 of the circuit court was reversed, with costs, and the libellant and appellant decreed to be entitled to the damages by him sustained by reason of the collision in the pleadings mentioned, and the cause was remanded to the said circuit court for further proceedings, in accordance with said decree; that in accordance with said mandate, by order of said circuit court, it was referred to a commissioner to ascertain and compute the damages sustained by the libellant

and appellant, by reason of the said collision, and thereafter and on the nineteenth day of October, A. D. 1859, the said commissioner filed his report by which the sum of three thousand two hundred and sixty-two dollars and thirty cents was reported to the court as the amount of said damages; that the claimants excepted to the said report, among other things, because the commissioner had reported due the appellant the sum of three thousand two hundred and sixty-two dollars and thirty cents, because he had allowed the sum of sixteen hundred and three dollars and three cents to the
165 libellant, for the repairs of the steamboat Hector, with interest, because he had allowed the sum of one thousand and fifty dollars for the demurrage and detention of the steamboat Hector, with interest; that said exceptions came on to be heard before the said court, and that on the 17th day of January, 1861, by decree of the said circuit court, the said exceptions were sustained in part, and the libellant was decided not to be entitled to recover anything whatever for the demurrage of said steamboat, and was decreed to recover only the sum of two thousand one hundred and sixty-two dollars and eighty cents for the damages sustained by him by the said collision. And the libellant and appellant claims that the said decree was erroneous, in that he was entitled to recover also his damages for the demurrage of the said steamboat; wherefore this appellant prays that the said decree of the said circuit court, and the pleadings and proceedings and affidavits in the said cause, may be sent to the Supreme
166 Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, so far as it disallows the sum of ten hundred and fifty dollars to the appellant, may be reversed, a decree made decreeing the appellant to be entitled to recover the said sum of ten hundred and fifty dollars, together with the sum of twenty-one hundred and sixty-two dollars and eighty cents, the amount decreed by the circuit court to be due, or such other decree made as to the said Supreme Court shall seem just, with costs.

Dated New York, February 5th, 1861.

BENEDICT, BURR & BENEDICT,
App'l's Proct's.

E. C. BENEDICT, *Advocate.*

Filed Feb'y 11, 1861.

167 Circuit court of the United States of America, southern district of New York, in the second circuit.

RUSSELL STURGIS, libl'nt and appl'nt,
vs.
THE STEAMBOAT "R. L. MABEY," HER TACKLE, &C., JOHN CLOUGH, ROBERT L. MABEY & HENRY M. WEED, claimants and appellees.

Know all men by these presents, that we, Russell Sturgis, of 164 10th st., New York city, Isaac Vanderbilt, of 152 Division avenue,

city of Brooklyn, New York, and Joseph Tinckham, of No. 28 Seventh avenue, New York city, are held and firmly bound unto the above-named John Clough, Robert L. Mabey, and Henry M. Weed, in the sum of two hundred and fifty dollars, to be paid to the said appellees; for the payment of which, well and truly to be made, we bind
168 ourselves and each of us, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents. Sealed with our seals, and dated the second day of February, 1861.

Whereas the above-named appellant has prosecuted an appeal to the Supreme Court of the United States at the city of Washington, in the District of Columbia, to reverse a decree rendered in the above suit by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above-named appellant shall prosecute his appeal to effect and answer all damages and costs, if he fail to make his appeal good, then this obligation shall be void; otherwise, the same shall be and remain in full force and virtue.

RUSSELL STURGIS. [L. S.]
ISAAC VANDERBILT. [L. S.]
JOSEPH TINKHAM. [L. S.]

Sealed and delivered and taken and acknowledged this second day of Feb'y, 1861, before me.

[L. S.]

W. D. JONES,
Notary Public, N. Y. City.

UNITED STATES OF AMERICA,
169 *City, County, and State of New York, ss:*

Russell Sturgis, Isaac Vanderbilt, and Joseph Tinkham, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities.

RUSSEL STURGIS.
ISAAC VANDERBILT.
JOSEPH TINKHAM.

Sworn to before me this 2d day of Feb'y, 1861.

[L. S.]

W. D. JONES,
Notary Public, N. Y. City.

I approve the above bond and the sufficiencies of the sureties thereto, Feb'y 2, 1861.

D. A. SMALLEY, *Judge.*

Endorsed: U. S. circuit court. Russell Sturgis *vs.* The Steamboat R. L. Mabey, &c. Bond on appeal. Benedict, Burr & Benedict, libl'ts and appl'ts' proctors.

Filed Feb'y 2, 1861.

170 By the honorable D. A. Smalley, one of the judges of the circuit court of the United States for the southern district of New York, in the second circuit.

To John Clough, Robert L. Mabey, Henry M. Weed:

Whereas Russell Sturgis has appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, in the second circuit, made in favor of him, the said Russell Sturgis, against you, the said John Clough, Robert L. Mabey, and Henry M. Weed, claimants of the steamboat R. L. Mabey, and has filed the security required by law: You are therefore hereby cited to appear before the said Supreme Court, at the city of Washington, on the 4th day of March, 1861, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the second
171 circuit, the 2d day of February, in the year one thousand eight hundred and sixty-one, and of the independence of the United States the eighty-fifth.

D. A. SMALLEY, *Judge.*

Endorsed: U. S. circuit court. Russell Sturgis, libellant and appellant, *vs.* The S. B. R. L. Mabey, John Clough and others, claimants and appellees. Citation. Benedict, Burr & Benedict, appellants' procts.

I hereby admit due and personal service of the within citation on Robert L. Mabey, John Clough, and Henry M. Weed.

Feb'y 2, 1861.

J. VAN VLECK,
Proctor for Claimants and Appellees.

Filed Feb'y 11, 1861.

Filed February 21, 1862.

899

No 121

Jany Term 1856

Supreme Court,

OF THE UNITED STATES.

RUSSELL STURGIS,
Libellant and Appellant,

vs.

JOHN CLOUGH AND OTHERS,
Claimants of the Steamboat R. L. Mabey, her tackle, &c.

Points of Respondents, Claimants.

The present appeal is an appeal from the decision of an appeal taken from the report of a commissioner by the respondents to the Circuit Court of the Southern District of New York.

The order of reference to the commissioner will be found at page 3 of case.

The report of the commissioner, at page 57, reports due the libellant for damages, $3,262 30.

The decisions of the Judge at the Circuit will be found at page 62, and the decree at page 63, allowing the libellant $2,137 30.

The damages occurred from a steamboat collision on the 11th of August, 1854, *vide* libel in this action.

Opinion of Judge Grier in this case, 21 Howard, 451.

The testimony of David Lampman, case, page 37, fol. 95. William Sweeney, case, page 27, fol. 71. The Hector (the steamboat damaged) was not taken from her business to repair until August 20th, 1854; *vide* testimony of Joseph Tinkham, page 15 of case, fol. 40, and page 16, fol. 42; and testimony of P. McGinness, page 26, fol. 68.

The carpenters finished their work, Sept. 7th, 1854, *vide* testimony of Thomas Huff, case, page 23, fol. 60.

The bills for repairs will be found at pages 54, 55, and 56, of case, amounting in the aggregate to $1,600 53.

First Point.

There was no error in the decision of the Judge at the circuit, deducting the sum of $1,090 50 from the amount of $3,262 30 allowed by the commissioner.

By referenee to the opinion of the Judge upon a motion made before the Judge to revise his decision, case, page 62, fol. 167, he says:

"In passing upon the question of demurrage, and in refusing the taking of further testimony in respect to it, I was influenced as to the latter result (the refusal to take further evidence) from a conviction that the repairs allowed were greater than justified upon the proofs. These have to be watched, as in cases of collision there is an opportunity, and not unfrequently a disposition, by the successful party, to aggravate them. I should have been obliged, therefore, to have set aside the whole report, and the withholding of the reference in the demurrage satisfied me the result would be about just between the parties on the whole case."

This decision distinctly shows that, although the decree drawn up by the proctors for the libellant is in form, that the libellant receives nothing for the detention of the steam tug while being repaired, yet was, in fact, in part, based upon

the conviction of the judge that the repairs allowed were greater than justified by the proofs.

Indeed, it will be seen from the report of the commissioner, case, page 57, fol. 145, that he reports a gross sum only, without particularizing how that sum is made up, and which forms the fourth exception to the report of the commissioner, case, page 57, fol. 146.

Second Point.

The proof did not justify the commissioner in allowing the sum claimed for the repairs of the steam-tug Hector.

The damages claimed are for putting on an entire new deck forward of the wheels: Testimony of Thomas Huff, case, page 4, fol. 9. The repairs consequent and necessary from the collision did not require as extensive repairs.

The collision was only on the starboard side. The libellant does not claim any injury to the larboard side. Two witnesses swear that there was only an injury to the guards on the starboard side of the boat, none to the deck or to the larboard side; testimony of William Sweeney, page 28, fols. 72, 73, and 74, of case; David Lampman, pages 38, and 39, fols. 96, 97, 98, and 99.

There is but one other witness who pretends to have seen the Hector at the time, and after the collision, until the 29th of August, some eighteen days after.

James Renaud, the engineer, case, page 16, fol. 43. He is contradicted by both Sweeney and Lampman, directly.

By the fact that no repairs were made until eighteen days after the collision, during which time the Hector continued towing for most of the time.

Tinkham, case, page 16, fol. 42, expressly testifies on his cross-examination, that in the condition the Hector

was, on the 29th of August, she could not have been used at all for towing.

All the witnesses agree, that, after the collision and before the survey made by Tinkham, she had been used for towing.

Is not this fact corroborative of the testimony of Sweeney and Lampman, and contradictory of that of Renaud?

The claimants contend that putting on an entire new deck was entirely unnecessary from any injury received by the Hector from the collision.

That if it was necessary on the 29th of August, it was not so in consequence of the collision.

The survey made by Tinkham, on the 29th of August, was one of the preparatory steps taken by the libellant to trump up an exorbitant claim for damages.

Why, if the Hector was damaged by the collision to such an extent as to require an entire new deck, wait eighteen days before making a survey? Renaud is the only witness who says the survey was a day or two after the collision. In this, as in other portions of his testimony, he is contradicted by other witnesses, and by facts conceded.

Third Point.

The claimants contend that all they should be compelled to pay is simply for putting on the starboard guard, testimony of Herbert Lawrence, case, page 41, fol. 104, states expenses of such repairs would have been $150, and Peter C. Ruck, case, page 42, fol. 108.

The whole of the testimony of the libellant, with the exception of that of Renaud, was speculative, made eighteen days after the collision.

The testimony of Huff, case, page 3, fol. 8, and that of Dougherty, page 7, fol. 18, was objected to by claimants,

but the testimony was admitted by the commissioner, who in the testimony of Lawrence, page 41, of case, fol. 104, ruled out like testimony as to the effect of the collision, offered by the claimants.

The bill rendered by McGinnis & Co., case, page 54, fol. 138, contains a charge for two hundred and forty-six days' labor. This work was commenced August 30th and ended September 7th, eight working days, Sunday intervening.

None of the witnesses pretend that there were more than twenty hands employed any one day, see testimony of Huff, case, page 23, fol. 61. It would require at least thirty hands during each day, to make up the number of days charged, see testimony of Lawrence, case, page 40, fol. 103.

Four witnesses for the claimants, Thomas, page 35, fol. 91, Lawrence, page 40, fol. 103, Ruck, page 42, fol. 106, Dickey, page 45, fol. 113, examined the Hector, saw what work had been done, and each, after a calculation and estimate, testify for what the work should have been done, the lowest estimate made by them is $754 17, and the highest is $856 54. The libellant called no witnesses as to the estimate.

Vide 1 Abbott, Admiralty Reports, page 100, as to the propriety of this testimony.

The testimony of Sweeney, case, page 28, fol. 73, and page 29, folio 74, shows the guards and deck to have been in a very dilapidated condition.

Shultz, testimony, page 47, fol. 120, shows her to have been an old boat, some twenty years old.

Collyer, testimony, page 53, fol. 134, shows that, at the time of the hearing before the commissioner, her hull was so old and worthless that the libellant was building a new hull for her engine.

FIFTH POINT.

The testimony in this case does not warrant an allowance for detention and demurrage. The testimony is too uncertain to form the basis of any allowance for the detention.

The testimony of the libellant is speculative, conjectural, mere opinions to which no rule or limit can be applied, and which can lay the foundation for the action of this Court on this subject.

The precise time she was detained does not appear otherwise than from the fact that she was surveyed on 29th of August and finished September 7th, the carpenters and calkers working together. McGinnis, page 26, folio 68, says he had seen four or five painters at work on one day. Twelve and a half days are only charged for labor of painters, page 55, folio 139. For this detention the Judge assumed that the commissioner had allowed $1090 50.

If these repairs were not such as necessarily grew out of the effects of the collision, claimants cannot be charged with the detention for making them.

The witnesses called by the libellant are only examined as to the gross earnings of the Hector. Not a question was put by counsel for the libellant as to expenses of boat. A very convenient way of swelling a claim for damages.

The witnesses called for claimant, which, by ruling of the commissioner were only four, Lockwood, page 46, Lampman, 37, Coffin, 49, Adams, 43, all show expenses to be forty-five dollars a day, and her net earnings not to exceed from twenty-five dollars to thirty dollars a day.

The commissioner allowed $1,099 50.

The vessel was once sold at auction for five thousand dollars, Shultz, page 47.

The value of the Hector at the time of the collision is shown to have been twelve thousand dollars, Lockwood, page 46, fol. 117; Coffin, page 49, fol. 125.

Her business at the time of the collision, Coffin, page 50, fol. 127, Sweeney, page 29, fol. 75. The allowance by the commissioner for demurrage of $1,099 50, for fourteen days, would be, in any event, an extravagant allowance. The Hector would soon pay for herself by demurrage alone, and the libellant was interested in delaying her the longest possible time by putting on an entire new deck. She was an old boat, and the testimony of her pilot Sweeney, shows her deck and guards to have been in a dilapidated condition.

She undoubtedly required a new deck from her age.

JOHN VAN VLECK,
Counsel for Respondents and Claimants.

Supreme Court of the United States.

RUSSELL STURGIS,
Libellant and Appellant,
vs.
JOHN CLOUGH, ROBERT L. MABEY, and HENRY M. WEED, claimants of the steamboat R. L. Mabey, her tackle, &c.

Brief and Points for Libellant and Appellant

This is an appeal from a decree of the Circuit Court of the United States, sitting in admiralty, for the Southern District of New York.

The libel was filed to recover the damages sustained by the libellant by reason of a collision between the steamboats "Hector" and "R. L. Mabey." The District Court dismissed the libel, and the Circuit Court, on appeal, affirmed the decree. An appeal was then taken to this Court, and at the December term, 1858, the decree of the Circuit Court was reversed, and the record remitted, with instructions to enter a decree in favor of the libellant, and take such further proceedings as to justice and right might appertain.

Sturgis v. Clough, et. al., 21 *How.* 451.

The mandate of this Court was filed in the Circuit Court, and on the 25th day of April, 1859, an order was entered in accordance with the mandate, and directing a reference

to a Commissioner to ascertain and report the amount of the damages sustained by the libellant. (Fol. 2 to 7.)

The Commissioner, after taking the testimony, reported on the 19th day of October, 1859, that the libellant was entitled to recover the sum of $3,262 30. And to this report of the Commissioner the claimants excepted. (Fol. 144 to 147.

On hearing the exceptions the Court struck out the sum of $1,099 50, as improperly allowed for demurrage. (See opinion, which is referred to at fol. 167 of the printed record, and a copy of which is hereto annexed.)

The libellant thereupon moved the Circuit Court, among other things, for an order referring it back to the Commissioner to ascertain the sum to be decreed for fourteen days' detention of the vessel while undergoing repairs. This motion was made upon affidavit and upon the pleadings and proceedings in the cause. (Fol. 148 to 157.) This motion was denied. (Fol. 157).

A decree was thereupon and on the 17th day of January, 1858, entered in the cause, by which, among other things, it was adjudged that the libellant was not entitled to recover any sum whatever for the detention of his vessel during the time she was undergoing repairs (fol. 159), and further decreeing that the libellant was entitled to recover the sum of $2,162 80, the same being the amount expended by the libellant in repairing the damages caused by the collision. (Fol. 159.)

From this decree an appeal has been taken by the libellant.

FIRST POINT.

The Commissioner in his report found the amount due to the libellant, but he did not state the items or particulars of the account and claim allowed by him.

It does not appear from the report how much of the amount found due was for repairs or how much for demurrage, and the exceptions being to a general report containing no specification of the items allowed or disallowed, should have been overruled.

The Ship Potomac, 2 *Black*, 581.

SECOND POINT.

The Court below adjudged that the libellant was entitled to recover the sum of two thousand one hundred and sixty-two dollars expended by him in repairing the injuries caused by the collision, with interest (fol. 159). The exceptions taken by the claimants to the amount allowed for repairs were overruled, and, they not having appealed from the decree, are concluded thereby and cannot object that any of the items which go to make up this amount were improperly allowed.

But the amount expended for repairs and the necessity and propriety of the expenditure were proved. Exhibits No. 1, No. 2, No. 3, No. 4, pages 54, 55, 56.

THIRD POINT.

The libellant was entitled to compensation for the detention of the vessel during the time necessary to make the repairs and fit her for her business, and the evidence given before the Commissioner conformed to the rule laid down in the case of *Williamson vs. Barrett*, 13 *Howard*, 101.

1. At the time of the collision the "Hector" was engaged in the business of towing vessels to and from sea and about the harbor of New York, and was earning money in that business. There was a demand for the services of vessels of her description in the Port of New York, during the time required for the completion of her repairs, which was fourteen days.

Testimony of Joseph T. Martin, fol. 38.
" *Emerald T. Wilson,* " 49.
" *Jeptha P. Parks,* " 51.
" *Soloman Thomas,* " 52.
" *Charles Hazzard,* " 54.

See folio 44, 59, as to the time used in making the repairs, and there is no evidence to the contrary.

2. She could have been chartered during that time, and witnesses were examined both by the libellant and claimants to prove what she was worth per day to charter. The testimony of the libellant's witnesses will be found at the folios above cited, and that of the claimants' witnesses at folios 98, 110, 117, 124.

3. The libellant proved without objection the value of the "Hector" per day with her crew and officers (fol. 38), and no objection was taken by the claimants to any evidence offered before the Commissioner for the purpose of showing what she would earn for the libellant on hire or charter during the time of her detention. The only question contested was as to the amount, and the exception taken to the Commissioner's report was not that he had allowed for damages or the detention of the vessel, but it was to the amount allowed.

4. The only question which the Commissioner was called upon to determine, was how much he would allow as the proved value of the vessel to charter, and having decided that question on conflicting evidence, his decision should not have been disturbed.

5. But if the Commissioner erred in awarding too large a sum for demurrage, or if any error was committed by him in the rule which he adopted in determining the amount on the evidence, it should have been referred back to the Commissioner to take further proof. It is impossible to deny that the libellant did not sustain a loss by reason of the detention of the vessel for the period of fourteen days; and if there was any error in the manner in which such loss was attempted to be proved, an opportunity should have been given to him to correct the error. The motion made by the libellant for this purpose should have been granted.

6. The report of the Commissioner did not show how much was allowed for demurrage, and the claimants having proved by their own witnesses that the vessel was worth a price for hire or charter, the libellant was entitled at least to recover the sum so proved. It was not for the claimants to insist that the libellant could not recover the sum proved by them to be the loss sustained by reason of the detention of the vessel.

But the amount allowed by the Commissioner was fully justified by the evidence. The weight of the testimony is that the vessel was worth $100 a day to charter.

The officers and crew were engaged on board the

vessel and assisted in making the repairs (fol. 44), and the only expense to be deducted was for four tons of coal per day at, say $5.50 per ton (fol. 49, 69).

LAST POINT.

The decree should be reversed in so far as it adjudged that the libellant was not entitled to recover any sum whatever for the detention of the vessel during the time she was undergoing repairs, and a mandate should be issued to the Circuit Court, directing that Court to enter a decree in favor of the libellant for the amount reported by the Commissioner.

CHARLES JONES,
Advocate for Libellant and Appellant.

(Opinion of Mr. Justice NELSON referred to in the Brief and Points.)

RUSSELL STURGIS,
vs.
The STEAMBOAT "R. L. MABEY."

NELSON, C. J.—This is an appeal from a decree confirming the report of the Commissioner on the damages in a case of collision. The aggregate of the bills proved for repairs, &c., is $1,608.63. The Commissioner has reported damages to the amount of $3,262.30. If we add interest, say for five years from 1st November, 1854, to the date of report, October 19, 1859, upon the bills for repairs, &c., of $1,608.63, which is $562.80, it makes the aggregate $2,162.80, which deducted from the amount reported, leaves a balance of $1,099.50, that must have been allowed for the fourteen days' demurrage.

We are not satisfied that the proofs bring the case upon the question of damages within the rule laid down in Williamson *vs.* Barrett, 13 How., 101, 111, 112. A good deal of the testimony was general, and turned upon mere opinion as to the probability of employment in the towing business and the amount of the earnings, if employed.

This kind of proof is too speculative and contingent to be the foundation of any rule of damages—it is at best but conjecture. The true question within the case of Williamson *vs.* Barrett was what could the tug have been chartered for per day in the business of towing, regard being had to the market price in the city of New York. This would have brought the question down to some degree of certainty and afforded ground for an intelligible allowance or not, of the loss which the libellant had actually sustained by the delay during the repairs.

The facts as left by the examination before the Commis-

sioner, are too uncertain to form the basis of any allowance for the detention; they are speculative, conjectural, mere opinions, to which no limit or rule can be applied, and which can never lay the foundation for the action of a Court on this subject. We shall, therefore, strike out the items for demurrage, $1,099.50, and confirm the decree for $2,162.80—costs to be allowed on appeal for neither party as against the other.

For libellant, Messrs. Benedict, Burr & Benedict; for claimant, Mr. Van Vleeck.